

# **City of Cincinnati Independent Monitor's Sixth Quarterly Report**

**July 1, 2004**

Quarterly Report regarding compliance with and implementation of the Memorandum of Agreement between the United States Department of Justice and the City of Cincinnati and the Cincinnati Police Department, and the Collaborative Agreement between the Plaintiffs, the Fraternal Order of Police and the City of Cincinnati

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# **CITY OF CINCINNATI INDEPENDENT MONITOR'S SIXTH QUARTERLY REPORT**

## **EXECUTIVE SUMMARY**

This is the sixth report of the Independent Monitor under the Memorandum of Agreement (MOA) between the City of Cincinnati and the United States Department of Justice, and the Collaborative Agreement (CA) among the City of Cincinnati, the Plaintiff class, and the Fraternal Order of Police (FOP). The period covered is from January 1, 2004, through April 30, 2004, though we also review more recent activities from May 1, 2004 to July 1, 2004.

This report details the implementation of and level of compliance with the MOA and the CA. The MOA calls for police reforms in the areas of police use of force, citizen complaints, risk management, and training. The CA calls for the implementation of Community Problem Oriented Policing (CPOP), mutual accountability and evaluation, bias-free policing and the establishment of the Citizen Complaint Authority (CCA).

## **MEMORANDUM OF AGREEMENT**

### **General Policies**

The MOA requires the Cincinnati Police Department (CPD) to create a group of specially trained officers to respond to incidents involving persons who are mentally ill. The CPD has trained 110 officers as part of a Mental Health Response Team (MHRT), and revised its policies on dealing with the mentally ill. During this quarter, over 75 percent of MHRT calls resulted in an MHRT officer being dispatched to the call. In-service training of MHRT officers is critical to keep them proficient in dealing with MHRT calls. The CPD has not yet conducted in-service training sessions and recertification.

Our review of investigations of incidents in which there was a foot pursuit showed that supervisors have begun evaluating the tactical soundness of officers' foot pursuits.

## **Use of Force Policies**

The CPD's current Use of Force policy is in compliance with the MOA.

This is the first quarter in which CPD officers made widespread use of the new X-26 Tasers. From the CPD's force statistics and a review of Taser incidents, it appears that the Tasers are being used by CPD officers instead of other types of force, such as physical confrontations and impact weapons. Using a Taser can eliminate the need for an officer to close the distance between himself or herself and the subject. The CPD and others suggest that this will reduce injuries to both the officers and the subjects involved. Unlike other weapons, there is no lasting impact or injury after Taser use, according to the CPD. Tasers are not risk-free, however. There can be injuries from Taser use, particularly from the fall to the ground. Moreover, officers must be careful not to use Tasers in situations where force is not necessary. We believe that Taser use warrants careful monitoring and evaluation by the CPD, to ensure that officers are properly considering alternatives to force such as disengagement and verbal commands, or arrest control techniques. In addition, the CPD should track research on the new Tasers, particularly given controversies in other jurisdictions where in-custody deaths have followed Taser use.

The Monitor Team reviewed a sample of chemical spray reports. As in the prior quarters, there were several cases where it appeared that subjects were not warned that chemical spray would be used if they did not comply with the officer's commands. The CPD needs to document if there is a reason why a warning was not used.

## **Incident Documentation, Investigation, and Review**

Documenting and reporting officers' use of force allows CPD supervisors to evaluate the appropriateness of the individual use of force and to track and identify any needed changes in tactics, training and policy.

We conclude that the level of documentation and reporting for officers' use of "hard hands" and takedowns without injury does not meet the modified reporting requirements agreed to in 2003. Officers need to provide a narrative description of the incident and the events that led to the need for force. Supervisors, although they do not need to respond to the scene to investigate, do need to review the officer's Report of Non-Compliant Suspect/Arrestee and provide a written evaluation of the officer's tactics, and whether the force was consistent or not with CPD

policy. The current practice, while an improvement from the prior quarter, still does not comply with this requirement.

The Department of Justice and the CPD have resolved a dispute over the reporting and investigation of “hard hands” and takedowns where the subject was injured. Both sides accepted a proposal submitted by the Monitor that includes a supervisor response and investigation, but does not require audio-taped statements. Supervisors must continue to evaluate the initial stop and seizure, the officer’s tactics and the force used.

### **Citizen Complaint Process**

The CPD’s complaint intake process is open and accessible and meets the MOA requirements. As in prior quarters, the Monitor reviewed a sample of use of force and complaint investigations. Most were complete and thorough, but in others, there were witnesses that should have been interviewed, but were not. Also, the CPD needs to ensure that investigators review the initial stop and seizure for compliance with policy.

### **Management and Supervision**

The CPD made significant progress in implementing the Employee Tracking Solution (ETS), its risk management system. The CPD obtained Department of Justice approval for the ETS Protocol and Data Input Plan that meet MOA requirements.

### **Training**

The Monitor observed Taser, Firearms and MHRT training sessions this quarter. We also observed Academy staff interaction with Field Training Officers (FTOs), as they evaluated the progress of probationary police officers. Our observations and our review of training records demonstrate continued compliance with MOA training requirements.

## **COLLABORATIVE AGREEMENT**

### **CPOP**

The Parties have made progress on the following elements of CPOP implementation:

- Developing a joint CPOP curriculum
- Expanding the Community Police Partnering Center and hiring six outreach workers
- Fielding CPOP training in several neighborhoods, conducted jointly by CPD neighborhood officers and Partnering Center outreach workers
- Continuing the work of active CPOP teams in Cincinnati neighborhoods
- Developing a draft Request for Proposal (RFP) for a new records management system

The Parties need to make improvements in the following areas of CPOP implementation:

- Researching evaluated “best practices”
- Training CPD officers on problem solving
- Engaging in community dialogue through a coordinated plan
- Improving the quality of the District Commanders’ quarterly problem solving reports, and ensuring that Commanders of other CPD units and sections write quarterly problem solving reports
- Reviewing Academy training courses to be consistent with CPOP
- Improving the problem solving tracking on the CPOP website
- Reviewing the CPD’s policies, staffing decisions, performance evaluations, and job descriptions to be consistent with a CPOP approach

### **Evaluation Protocol**

While the Parties have selected the RAND Corporation to conduct the Evaluation Protocol, there is one last dispute over the scope of services that is holding up finalization of RAND’s contract. For this reason, the Evaluation Protocol has not begun. We urge the Parties to quickly resolve this issue so the important work of evaluating progress on the CA can get underway.

### **Fair, Equitable and Courteous Treatment**

The CPD continues to collect vehicle stop data on Contact Cards and enter the information into a database, as required by the CA. However, without an Evaluator, the data has not been analyzed. In addition, CPD is not collecting all of the data it is required to collect from pedestrian stops. The CPD has complied with requirements to adopt policies and practices on fair and courteous treatment of citizens.

### **Citizens Complaint Authority**

After a selection process in which all of the Parties participated, the City has hired Mr. Wendell France as the new CCA Executive Director. Mr. France is well qualified for his position and has begun a review of the CCA's policies, procedures and standards for investigations.

## **CHAPTER ONE. INTRODUCTION**

During the 18 months the Monitoring Team has monitored the implementation of the Memorandum of Agreement (MOA) by the City of Cincinnati, we have noted consistent and steady progress made by the City in coming into compliance with the provisions of the MOA. When the totality of the MOA provisions are broken into their component parts, and reviewed against the standards of Compliance, Partial Compliance and Non-Compliance, progress can be noted in implementing the reforms required by the MOA. Our narrative description of MOA compliance in this Report particularly notes progress with the Employee Tracking System, the Mental Health Response Team, Training and the FTO Program.

Additionally, during the past sixty days the City and the Department of Justice (DOJ) have been at an impasse on the use of force reporting requirements for take-downs that result in injuries that do not require hospitalization. The Parties recently reviewed and accepted a proposal developed by the Monitor for investigating and reporting these incidents. We commend the City and the DOJ for working constructively to resolve the impasse. We will now look for progress in use of force reporting, and the documentation of CPD tactics aimed at de-escalation and avoidance of use of force.

Under the CA, the Parties have made important incremental steps in advancing Community Problem Oriented Policing (CPOP). Jointly-developed CPOP training has been delivered in several neighborhoods, the Community Police Partnering Center has hired six outreach staff, and joint CPOP teams are actively operating on problem solving in 11 Cincinnati neighborhoods. We also note in the CA Section of this Report areas of improvement that still must be addressed. These include refining the CPOP problem tracking system or using a different system to track problem-solving efforts in a meaningful way, and finalizing the contract with the RAND Corporation and getting the Evaluation Protocol underway.

CPOP involves a change in orientation for both the community and police that results in a shared vision for how public safety is accomplished. It means not just relying on traditional policing, but also on addressing the conditions that contribute to crime and disorder. Continued improvement in CPOP implementation is essential for the long term success of the Collaborative effort.

The Parties need to be reminded of the important goals developed by the Parties through the Collaborative:

- Police officers and community members will become proactive partners in community problem solving
- Build relationships of respect, cooperation and trust within and between police and communities
- Improve education, oversight, monitoring, hiring practices and accountability of CPD
- Ensure fair, equitable, and courteous treatment for all
- Create methods to establish the public's understanding of police practices and procedures and recognition of exceptional service in an effort to foster support for the police

Particularly as between the African American community and the CPD, achieving a relationship of mutual respect, trust and mutual accountability remains an unmet goal. The value statement contained in the CA “that different groups within the community with different experiences and perspectives share much more in common than not, and can work together on common goals and solve problems together,” is not going to be accomplished until all Parties to the CA make a greater effort to communicate across their historical differences. We have not seen evidence that those efforts are taking place. The Parties in their most recent status report, state that “[t]he City of Cincinnati, the FOP, and the Plaintiffs continue to be optimistic, enthusiastic, and committed to this endeavor.” This optimism, enthusiasm and commitment needs to be taken to, and shared with, the public.

## **CHAPTER TWO. MEMORANDUM OF AGREEMENT**

### **I. General Policies**

#### **A. Mental Health Response Team [MOA ¶ 10]**

##### **1. Requirement**

The CPD is required to create a “cadre of specially trained officers available at all times to respond to incidents involving persons who are mentally ill.” These officers will be called to the scene and assume primary responsibility for responding. Training for these officers shall include multi-disciplinary intervention training, with a particular emphasis on de-escalation strategies, as well as instruction by mental health practitioners and alcohol and substance abuse counselors. The CPD also shall implement a plan to partner with mental health care professionals, to make such professionals available to assist CPD officers on-site with interactions with mentally ill persons.

##### **2. Status**

The CPD has trained 110 officers as Mental Health Response Team (MHRT) officers. In its February 2004 Status Report, the CPD reported that it was planning four in-service trainings in 2004 and one new MHRT training class of approximately 30 officers. According to its May 2004 Status Report, the CPD is still finalizing a contract with Mental Health Associates for recertification training. To date, the training has not been scheduled.

Statistics for January-April 2004 show that, for the City as a whole, there were MHRT officers working every shift, each day. The CPD also tracks the deployment of MHRT officers to MHRT calls. In January 2004, MHRT officers were dispatched on 83 percent of the calls that were initially designated as MHRT calls (275 out of 333 calls). In February 2004, the percentage was 85 percent (299 out of 351), and in March, it was 78% percent (291 out of 373 calls). According to the CPD, during this three month period, there were only 21 calls for which an MHRT officer was not available or not working. The remaining calls were either determined not to be MHRT situations and the call was “disregarded” by a supervisor, the call was handled before the arrival of the MHRT officer, or the dispatcher did not enter an MHRT code. In addition, excluded from the MHRT response percentages are calls that initially came in to the CPD as some other type of call (e.g., family disturbance, unknown trouble, burglary, etc.), but were recoded as MHRT incidents because the

officers responding to the scene changed the designation to an MHRT incident or called for MHRT officers.

In reviewing the CPD's statistics over the last several quarters regarding MHRT calls for service and MHRT dispatch, we have noted a significant number of calls that were being cancelled without a MHRT unit being dispatched, or the MHRT response was "disregarded" by supervisors. To determine the reasons for the cancellations, we examined the computer assisted dispatch (CAD) printout for all 476 MHRT calls received during the month of March 2004. These calls included both those initially coded as MHRT calls and those re-coded as MHRT by the officers on the scene.

Of the 476 MHRT calls for service in March 2004, the CPD cancelled 38 calls without dispatch. We were able to review each of these calls and determined that all of them had been handled properly. Fifteen of the 38 callers just wanted to talk to someone, and were not having problems or were chronic callers. Three of the calls were for out state locations or bad addresses from the callers. The remaining calls fell into the categories of (a) callers that called back to say that the person had left the scene and police were no longer needed, or (b) medical staff calling to have police disregard and that they would handle the person.

In addition, calls that are being handled by the Mobile Crisis Team are not counted as an MHRT response. Currently, they are counted as MHRT unknown (P040770889) or not sent. While MHRT officers are not handling these calls, the Mobile Crisis Team is an appropriate response to a call involving a mentally ill person, and these calls should not be counted against the CPD in terms of an MHRT response. We suggest that the CPD count these calls as a separate category, and not as "MHRT unknown."

### **3. Assessment**

The CPD's policies have been revised to comply with the requirements of the MOA relating to incidents involving persons suspected of being mentally ill. As we have noted in previous reports, CPD's training of its MHRT officers also complies with the MOA. The training was multi-disciplinary, emphasized de-escalation, included role-play exercises and "shadowing" of mental health professionals, and provided officers with additional tools for identifying mental illness and responding to incidents involving the mentally ill. This training is now being provided to all new officers in the Police Academy.

The CPD has also developed in-service training for the current MHRT officers. This training has been awaiting scheduling for six

months, and continued compliance with the MHRT provisions will depend on successful completion of the in-service training.

We have also determined that the CPD has met its requirement to plan and implement a partnership with health care professionals to make those professionals available on-site to assist in handling calls involving mentally ill individuals. In our last Report, we reported on the Mobile Crisis Unit and its work with the CPD.

With respect to whether MHRT officers are responding to the appropriate incidents, the CPD has maintained a consistent level of MHRT response to MHRT calls of over 75% for the last three quarters, based on the statistics provided by the CPD. The number of calls where it was documented that an MHRT officer was unavailable has been quite low. Because there were a number of calls where there was no information regarding whether an MHRT officer was dispatched, or where the MHRT officer was disregarded by a supervisor, we conducted a review of cancelled MHRT calls. Our review indicates that the CPD is appropriately handling MHRT incidents. For this reason, we have determined that the CPD is in compliance with these MOA requirements.

## **B. Foot Pursuits [MOA ¶11]**

### **1. Requirement**

The MOA requires the CPD to develop and adopt a foot pursuit policy. The policy must require officers to consider particular factors in determining whether a foot pursuit is appropriate.

### **2. Status**

There was no change in policy or procedures during this quarter. The CPD included several scenarios relating to foot pursuits in its roll call training program this quarter. In addition, the supervisory review of foot pursuits was emphasized in management training of supervisors.

### **3. Assessment**

The CPD's foot pursuit policy complies with the MOA. This policy has also been incorporated into CPD training for officers and supervisors. With respect to implementation, we reviewed a number of investigations of Use of Force incidents and citizen complaints in which there was a foot pursuit. Documentation of the supervisor's review of some of these foot pursuits suggests that the policy and training are beginning to become part of CPD's routine reporting and review. However, we not prepared to

say that CPD is in full compliance at this time. We conclude that the CPD is in partial compliance with this provision of the MOA.

## II. Use of Force

In the table below, we provide the statistics for Use of Force incidents for the last six quarters. As can be seen from the table, the most significant development in the first quarter of 2004 was the widespread introduction of the Taser as a part of CPD's continuum of force. Use of the Taser and Taser training are discussed below.

**USE OF FORCE TABLE**

	3 <sup>rd</sup> Q 2002	4 <sup>th</sup> Q 2002	1 <sup>st</sup> Q 2003	2 <sup>nd</sup> Q 2003	3 <sup>rd</sup> Q 2003	4 <sup>th</sup> Q 2003	1 <sup>st</sup> Q 2004
Chemical Irritant	93, 24 restrained	117, 15 restrained	122, 26 restrained	155, 15 restrained	103, 19 restrained	105, 15 restrained	86, 10 restrained
Physical Force	52	67	71	79	27, plus 26 takedowns with injury  35 non-compliant suspects	29, plus 12 takedowns with injury  48 non-compliant suspects	17, plus 11 takedowns with injury  40 non-compliant suspects
PR 24	9	7	5	3	5	4	0
Canine	5	5	2	5	2	2	4
Taser	1	1	1	2	0	0	72
Beanbag/ Foam rd.	1 (animal)	0	0	4	0	0	1 (foam)
Pepperball	1	0	1	1	5	2	0
Firearms Discharge	0	0	1	0	0	1	3

### A. General Policies [MOA ¶¶ 12-13]

#### 1. Requirements

Under the MOA, Cincinnati is required to revise its Use of Force policy. The revised policy must do the following:

- It must clearly define the terms used in the policy
- The term “force” must be defined as it is defined in the MOA
- It must incorporate a “Use of Force model” that relates the officer's responses and use of force options to the actions of the subject, and teaches that disengagement, area

containment, or calling for reinforcement may be an appropriate response to a situation

- Whenever possible, individuals should be allowed to submit to arrest before force is used
- Advise against excessive force
- Prohibit choke holds
- The term “restraining force” must be removed from CPD’s policy
- The CPD’s revised Use of Force policy must be published on the CPD’s website and be disseminated to community groups

## **2. Status**

On July 29, 2003, the CPD issued a comprehensive Use of Force policy, Procedure 12.545, and included it in the CPD Staff Notes. In addition, on March 2, 2004, the CPD revised its Use of Force policy to incorporate new provisions relating to the new X-26 Tasers and Taser deployment.

Tasers have been added to the force options in the CPD’s Use of Force Continuum at the same level as chemical irritant. According to the policy, only officers who have undergone Taser training are authorized to use the Taser. Consistent with the MOA, officers are directed to provide the subject with a verbal warning that the Taser will be deployed, unless doing so would present a danger to the officer.

To avoid injuries due to falls, the policy restricts Taser deployment on obviously pregnant females, persons over 70 and under seven years of age, and individuals situated on an elevated surface. Generally, the Cincinnati Fire Department will be summoned to evaluate and provide the necessary medical treatment for the suspect. Should the Taser darts become embedded in soft body tissue areas or any area above the collar bone, officers will transport the suspect to the hospital for evaluation and dart removal.

In January 2004, the Department initiated the eight hour training course for the X-26 Taser. Since that time, approximately 50 officers have been trained each week. The training consists of tactical Taser exercises, familiarization and classroom instruction, which includes review of CPD’s revised Use of Force policy. As of March 31, 2004, 566

officers have been trained and equipped with the new Taser. Of the 556 officers, 440 submitted to a voluntary exposure of the five-second Taser cycle. Full implementation is expected to be achieved by the end of July, 2004.

### **3. Assessment**

The CPD's current Use of Force policy is in compliance with the MOA. The new provisions relating to Taser use and reporting also comply with the MOA. The CPD's procedures, including its use of force policies, are publicly available on its website, in compliance with paragraph 13 of the MOA.

#### **Taser Implementation**

According to the CPD, Tasers were used in 72 incidents in the first quarter of 2004. In addition, the threat of impending Taser use was sufficient to gain compliance in 26 additional incidents.

The advantage of the Taser is that, if it is effective, it eliminates the need for the officer to close on the subject and engage in a physical confrontation. In this way, it can substitute for other uses of force, such as strikes and impact weapons, that may have an increased risk of officer or citizen injury. According to CPD, unlike other uses of force, there is no lasting impact or injury after the use of a Taser. In its training of officers and its public statements, CPD has presented the new Tasers as the preferred use of force option that will result in increased safety for both citizen and officer.

Use of the Taser, however, is not completely without risk. First, there can be injuries from Taser use, particularly from the subject's fall to the ground after being hit by the Taser. The CPD reports that there were 13 injuries from the 72 Taser incidents in the first quarter. Twelve involved scrapes and cuts, but one involved a broken jaw. There also were three complaints of back or knee soreness and one complaint of chest pain. Second, widespread use of the new generation of Tasers is fairly recent, and in other parts of the country there have been in-custody deaths of persons whose arrest involved Taser deployment. While these deaths have not been attributed to the Taser use, a number of the incidents are still under investigation.<sup>1</sup> Third, as with any use of force option, the Taser should not be used in situations that could have been resolved without force.

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<sup>1</sup> Recent deaths in custody include two in Gwinnett County, Georgia, and one in Montgomery County, Maryland.

Although we are cautious about reaching conclusions concerning CPD's Taser use from three months of data, there are some preliminary observations we can make. From the Use of Force Table above, it appears that the introduction of Tasers has resulted in a reduction of other types of force, including chemical spray, physical force such as the PR24 and strikes, and beanbag and pepperball rounds. The total number of use of force incidents, however, increased slightly.

The Monitor Team reviewed the investigative files of 22 of the 72 Taser incidents. These files generally included the Use of Taser Report, associated arrest reports, a Taser download printout<sup>2</sup> and taped interviews with subjects and officers. In 11 incidents, the Taser was used during a foot pursuit to apprehend the subject; in six incidents, the Taser was used when the subject pulled away from officers attempting to place the subject in custody, or actively resisted an arrest; and in five incidents, the Taser was used because the subject refused to comply with the officer's commands and was "conspicuously ignoring" the officer. In three of the pursuit situations, in addition to deploying the Taser barbs, the Taser was used in "drive stun" mode<sup>3</sup> after the officers caught up with the subject.

In each incident but two (Tracking Numbers 2004-105 and 2004-0108), the supervisor's investigation and report was sufficient to determine that the Taser use was consistent with CPD policy. In 16 of the 22 cases, investigations documented that a verbal warning was given to the subject that the Taser would be deployed. For the remaining five, the reports and investigation were unclear whether or not a warning was given. What was not discussed in any of the investigations, however, was the consideration given by the officers to other force options or arrest control techniques. While the CPD has placed the Taser at low end of its force continuum, officers still need to consider whether any use of force is needed. This is especially true in situations where the subject's non-compliance is limited to "conspicuously ignoring" the officer. Articulating these considerations in the Use of Taser Reports will ensure that reviewing officials will be able to determine whether the Taser was the most appropriate and effective tool for gaining compliance.

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<sup>2</sup> The Taser data printout is another advantage of the Taser, as it records the time and date of every use of the Taser and the number of seconds that the Taser cycled for each use.

<sup>3</sup> The Taser can be deployed in two ways: it can shoot two barbs attached to wires, or it can be applied directly to the body of the person in "drive stun" mode.

We believe that Taser use warrants careful monitoring and evaluation by the CPD, to ensure that officers are properly considering alternatives to force, such as disengagement and verbal commands, or arrest control techniques. In addition, the CPD should track research on the new Tasers, particularly given controversies in other jurisdictions where in-custody deaths have followed Taser use.

## **B. Chemical Spray [MOA ¶¶ 14-19]**

### **1. Requirements**

The CPD must revise and augment its chemical spray policy to do the following:

- Clearly define terms
- Limit use of spray, including against crowds, to only those cases where force is necessary to effect the arrest of an actively resisting person, protect against harm, or prevent escape
- Provide that chemical spray may be used only when verbal commands would be ineffective
- Require supervisory approval for use of chemical spray against a crowd, absent exigent circumstances
- Require a verbal warning and the opportunity to comply before using a chemical spray, unless doing so would be dangerous
- Require officers to aim at the subject's face and upper torso
- Provide guidance on duration of bursts and recommended distance
- Require officers to offer to decontaminate sprayed individuals
- Request medical response for complaining subjects
- Prohibit keeping sprayed subjects in a face down position any longer than necessary
- Prohibit use of spray on a restrained person, except to protect against harm or escape
- Use of spray against restrained persons must be investigated, including tape recorded statements of officers and witnesses. Investigations of these incidents must be reviewed by the CPD's Inspections Section.
- Provide restraining equipment in CPD squad cars
- Provide in-service training on chemical spray
- Account for chemical spray canisters
- Periodically review research on chemical spray

## **2. Status**

There were 86 incidents in which CPD officers used chemical irritant spray in this quarter. In this quarter, there were ten uses of chemical spray on persons restrained (in handcuffs), compared to 15 in the last quarter, and 19 in the quarter before that. There was one use of chemical spray in a crowd situation in this quarter.

The CPD notes that of the 86 chemical spray incidents, two subjects were not decontaminated, five refused decontamination, and there were five incidents in which decontamination was not reported and could not be documented. We note that police cars are now equipped with moist towelettes for officers to use to decontaminate sprayed individuals, at the recommendation of the CCA Board.

## **3. Assessment**

### **a. Policy**

The CPD's policies regarding the use of chemical spray comply with the MOA.

### **b. Review of Sample Investigations**

#### **i. Warning that force would be used**

The CPD's Use of Force Report now contains a check box, "warned that force would be used," in the "verbalization" field of the form. In reviewing the chemical spray reports (and complaints) we sampled this quarter, eight documented that a verbal warning was given, while seven showed no indication of any verbal warning in either the "verbalization" field or the narrative portion of the report. Exigent circumstances appear to have precluded a verbal warning in at least some of these cases, but compliance with the MOA requires that the Use of Force Report specifically articulate such circumstances when a verbal warning is not given. The narrative section of the report is the best place to address these issues so that the Chain of Command (and the Monitor Team) can ensure that appropriate tactics and procedures were followed.

#### **ii. Spray of restrained individuals**

As we have noted in prior Reports, the MOA limits the circumstances in which chemical spray can be used on an individual who is already in handcuffs. Because a number of these incidents occur when a prisoner is being transported in a police car, the MOA requires the CPD to have restraining equipment in its vehicles and to train its

officers in using that equipment. The CPD should ensure that the investigations of such incidents determine whether the subject was restrained in any way other than handcuffs. If the subject was not restrained, the investigating supervisor should document the reason why retraining equipment was not used and assess whether the chemical spray was justified.

The CPD discusses these incidents in its May 12, 2004, Status Report:

In many of the cases involving combative prisoners in the rear of police vehicles, the individual is usually attempting to kick out compartment glass or is in some manner intentionally thrusting a body part (usually the head) against some part of the rear cruiser compartment. As stated in prior reports, CPD believes the potential for injury to the prisoner, and possibly even escape, is significant. Therefore, the use of chemical irritant appears justified under the MOA.

Our review this quarter of four force investigations and two citizen complaint investigations involving the use of chemical spray on a restrained person indicates that the officers deployed chemical spray in situations consistent with the MOA. Chemical spray was used to prevent injury to the subject (subjects banging head against car and partition, ingesting cocaine), to prevent escape from restraints, or to get a resisting subject into the police car. (As noted, however, some of the incidents did not document a verbal warning, and in one, the subject was not permitted to decontaminate.)

### **iii. Duration of spray, targeting of spray, decontamination**

Our review of chemical spray incidents indicates that CPD officers are complying with the MOA provisions relating to the distance and duration of chemical spray, and targeting the subject's face and upper torso. In most cases, the force reports also indicate that the subjects were allowed to decontaminate within 20 minutes. There was at least one instance, however, where the subject was not permitted to decontaminate.

## **C. Canines [MOA ¶20]**

In the first quarter of 2004, there were 156 total canine deployments, 15 canine apprehensions (where a suspect was found and arrested) and 4 canine bites. This bite ratio of 26.7 percent is a significant increase over earlier quarters; however, the increase is

attributable in large measure to a smaller number of individuals located, rather than a large increase in the number of canine bites.

## **1. Requirements**

The MOA requires the CPD to revise and augment its canine policies, subject to the review and approval of the Department of Justice. The CPD is to make continued improvements in its canine operations, including the introduction of an “improved handler-controlled alert curriculum” and the use of new canines. Specifically, the new canine policy must:

- Limit off-leash deployments to searches of commercial buildings or for suspects wanted for a violent offense or reasonably suspected of being armed.
- Require approval of a supervisor before deployment, except for on-leash deployments.
- Provide for a loud and clear announcement, warning of the canine deployment, and require officers to allow the suspect time to surrender.
- Handlers shall not allow their canines to bite a person unless the person poses an imminent danger, or is actively resisting or escaping.
- Where the canine does bite a person, the dog shall be called off at the first moment the dog can safely be released. The policy shall prohibit canines from biting nonresistant subjects. Also, immediate medical attention must be sought for all canine related injuries.
- The CPD shall track deployments and apprehensions, and calculate bite ratios. These bite ratios shall be included in the Risk Management System.

## **2. Status**

Pursuant to MOA paragraph 20, the CPD calculated the bite ratio (the number of bites compared to the number of total apprehensions involving a canine, with and without a bite) for the canine unit for the following six-month periods:

	<u>Bite Ratio</u>
August 1, 2003 – January 31, 2004	6.1% (3 bites in 49 finds)

September 1, 2003 – February 29, 2004	11.9% (5 bites in 42 finds)
October 1, 2003 – March 31, 2003	14.3% (6 bites in 42 finds)

Each of these bite ratios is below the 20% ratio that would trigger a review of the Canine Unit under the MOA.

The CPD also calculated bite ratios for each handler/canine team. There were two individual teams that had a bite ratio exceeding 20% for each of the three six-month periods. According to the CPD, each of the canine bites involved was “consistent with Department policies and procedures. Additionally, Use of Force policies were reviewed with each officer. In each instance, there was minimal injury to the arrested and the control of the canine was exceptional.”

While the CPD has conducted the canine team reviews required under the MOA, we recommend that the CPD track the deployments of these teams in the next quarter, to assess whether there are any patterns to their deployments (e.g., night versus day shift, or other explanation for fewer finds) that might indicate why they might result in a higher bite ratio.

In our Fifth Quarterly Report, we reviewed three investigations of canine bites from the second quarter of 2003. In this quarter, we reviewed two bite investigations from the third quarter of 2003. We assess those investigations in Chapter Four and summarize them below. The CPD has not completed its investigations of the six canine bites that occurred since September 2003.

### **3. Assessment**

#### **a. Policy**

The CPD’s Canine policy meets the requirements of the MOA. The Monitor Team will continue to examine canine training to assess compliance with the MOA’s requirement that the CPD introduce an “improved handler-controlled alert curriculum” consistent with the CPD’s revised policy.

#### **b. Review of Investigations**

The two canine bite investigations we reviewed were consistent with the MOA with respect to deployment criteria, authorization of a supervisor, canine announcement, and canine engagement. The investigations and reporting were thorough and detailed. However, because these investigations were from the third quarter of 2003, and there have been a number of canine bites since that time that we have

not been able to evaluate, we are not in a position to assess MOA compliance for this quarter. For the next quarter, we expect to review additional canine investigative files, as well as audit deployment forms for deployments that resulted in apprehensions without a canine bite.

#### **D. Beanbag Shotguns [MOA ¶¶ 21-23]**

There were no beanbag shotgun deployments in the first quarter of 2004; there was one deployment of a 40 millimeter foam round. The CPD is in compliance with the MOA requirements relating to beanbag shotgun deployment.

### **III. Incident Documentation, Investigation**

Documenting and reporting officers' use of force allows CPD supervisors to evaluate the appropriateness of the individual use of force and to track an officer's behavior over time. It also allows CPD to analyze use of force incidents, trends and patterns to evaluating officer tactics and determine whether any changes in procedure or training are needed.

#### **A. Documentation [MOA ¶¶ 24-25]**

##### **1. Requirements**

- All uses of force are to be reported. The Use of Force form shall indicate each use of force and require evaluation of each use of force. Use of Force Reports will include the supervisor's and officer's narrative description, and the officer's audio-taped statement.
- The CPD will implement an automated data system allowing supervisors access to all use of force information.
- The CPD will implement a Canine Deployment form.
- If the gun pointing requirement is triggered under the Collaborative Agreement, data reported shall be included in the risk management system.

##### **2. Status**

###### **a. Hard Hands and Takedowns without Injury**

In June 2003, the Justice Department and the CPD reached an agreement modifying how the CPD would report and investigate use of

“hard hands” and takedowns, where there was no injury, complaint of injury or allegation of excessive force. In these situations, the officer using force must complete a “Noncompliant Suspect/Arrestee Report” (Form 18NC), which must be reviewed, along with the Arrest Report and any other associated reports, by the officer’s supervisor. The officer must provide a written narrative of the incident and include a description of the subject’s resistance, the defensive tactic used to overcome that resistance, the force used, and the events leading up to the use of force. The supervisor is required to evaluate and provide written comments on the tactics used and the appropriateness of the use of force. The Inspections Section would also review the reports for tactical errors, legal issues, and policy and training issues.

In our January 2004 Fourth Quarterly Report, we concluded that the 18NC Forms and Arrest Reports were not providing sufficient information about the incidents. The reports did not contain the required narratives and description of events, so that supervisors reviewing the reports were not able to evaluate the appropriateness of the officer’s tactics and use of force. In addition, we noted that the supervisors were not providing written comments on the officers’ tactics and use of force; there was only a signature line for the supervisor and a signature line for the Inspections Section, and no space for comments by either one. In a January meeting with the Monitoring Team, the CPD agreed to review the Noncompliant Suspect/Arrestee Report (Form 18NC). In response to our concerns, the CPD agreed to require a narrative on the 18NC Form, and require that the report be reviewed by a supervisor before the end of his or her tour of duty.

In our April 2004 Fifth Quarterly Report, we noted continued non-compliance with the force reporting requirements for “hard hands” and takedowns without injury. While there were some Noncompliant Suspect/Arrest Reports that included officer narratives, and a few that also contained a supervisor’s written comments, most did not capture the required information. We expressed an expectation that revisions to the 18NC Form would result in additional compliance.

#### **b. Hard Hands and Takedowns with Injuries**

Our last two Quarterly Reports reported a dispute between the Department of Justice and the City of Cincinnati regarding the reporting and investigation of officers’ use of “hard hands” and takedowns where the subject was injured, but where no hospitalization resulted. The crux of this dispute was whether the statements of the subject, officers, and witnesses taken during the supervisory investigations were required to be audio-taped.

In May 2004, both the City of Cincinnati and the Department of Justice accepted a proposal by the Monitor to resolve this dispute.

1. For a six month period, starting July 1, 2004, the CPD will investigate and report as follows for takedowns that result in injury, if the injury does not result in hospitalization. (Serious injuries, including hospitalizations, would be dealt with as a “serious use of force” which requires IIS to respond and investigate, under paragraph 29.) For such incidents, a supervisor will be called to the scene to conduct a supervisory investigation. The investigation will include interviews with all witnesses, including the subject(s), officer(s), medical treating personnel (if practicable) and third party witnesses. The interviews do not need to be taped. The report of the investigation will include the supervisor’s narrative description of events leading to the use of force, and a description of the subject’s resistance and each and every type of force used by the officer(s). The investigation and report will include a review and determination of whether the officer’s actions in regard to the initial stop or seizure were within CPD policy, and a review and determination of whether the use of force was within CPD policy.<sup>4</sup>

2. The monitor will review a sample of investigations that involve takedown with injury to assess their compliance with the requirements above. The Justice Department will also review the sample investigations.

3. In addition, for “hard hands” and takedowns without injury, CPD will recommit to including a narrative account of the incident, including a description of the events preceding the use of force, the subject’s resistance and each and every type of force used. A first-line supervisor shall review the form and provide written comments on the appropriateness of the officer’s tactics and the force used. The Inspections Section shall review the report for tactical errors, and legal, policy and training issues.

4. If after the 6 month period, the Monitor determines that the reporting is sufficient and that the uses of force and use of force

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<sup>4</sup> Currently, the CPD is reporting these incidents on Form 18I, Injury to Prisoner Report. So long as the requirements listed above are met, the form used is a matter for CPD discretion. However, the current Form 18I does not include the “Empty Hand Controls” check boxes, and does not document the Investigating Supervisor’s and the District/Section Commander’s assessment of whether the “Initial Contact, as reported above, consistent with Police Department policy: ☐ yes ☐ no” and “Force used, as reported above, consistent with Police Department policy: ☐ yes ☐ no.” The Use of Force Report, Form 18F, does include these questions.

investigations are consistent with the MOA, the MOA will be amended to reflect the proposal. If the Monitor determines that the force incidents and investigations are not consistent with the MOA, “hard hands” and takedowns that result in injuries will be reported with audio taped statements from the subject, involved officers and witnesses.

### **3. Assessment**

#### **a. Non-Compliant Suspect Forms (Form 18NC)**

The Monitor Team reviewed a sample of 37 Noncompliant Suspect Forms (Form 18NC) and associated arrest reports from the 1<sup>st</sup> quarter of 2004. The Noncompliant Suspect Forms and the Arrest Reports are still not capturing sufficient information to comply with the requirements of the MOA and CPD policy. While a supervisor no longer needs to respond to the scene and investigate the use of force, the officer involved needs to provide a narrative description of the events leading up to the use of force, and a description of the force used and the subject’s resistance. At least eight of the 37 lacked sufficient facts to find compliance, and two did not have any narrative or description of the force used at all. In addition, only two of the incidents included written comments by the supervisor evaluating the officer’s tactics and use of force. For one of these incidents, an MVR tape was available. We reviewed the MVR and disagree with the supervisor’s conclusion that the force was in policy, as noted in our review in Chapter Four.

The CPD is not in compliance with this MOA requirement. In future quarters, we will expect that the review by Inspections will result in returning the forms and reports if they do not contain the information required.

#### **b. Takedowns with Injury**

A new reporting procedure will be put in place for takedowns with injury starting July 1, 2004.

#### **c. Reporting Multiple Uses of Force in One Incident**

The MOA requires that the CPD document and evaluate each separate use of force, even when there are multiple uses of force in the same incident. As noted in past Reports, not all of CPD’s force forms account for this requirement. For example, in two of the Taser incidents reviewed this quarter, a takedown was also used. The Use of Taser Report does not have any place to record the takedown, other than in the narrative, so that the use of force involving the takedowns were not separately reviewed and evaluated. They also will not appear in the

CPD's use of force statistics. Use of the ETS system to report and document force should address this issue.

## **B. Investigation [MOA ¶¶ 26-31]**

### **1. Requirements**

- Officers to notify supervisor following any use of force, or allegation of excessive force. Supervisor to respond to scene. Incident not to be investigated by officer who used force or who authorized force.
- CPD supervisors will investigate each use of force incident, with evaluation of compliance with CPD policies and tactics, including the basis of any stop or seizure.
- IIS will respond to scene of all "serious uses of force" and all canine bites with serious injuries. Inspections Section will review all investigations of canine bites, beanbags, foam rounds and baton uses.
- Investigators prohibited from asking leading questions. Investigators to consider all relevant evidence and make credibility determinations. No automatic preference for officer's statement over citizen's; statements of witness with connection to complainant should not be discounted. The CPD to resolve material inconsistencies. The CPD will train investigators on factors to consider in investigations.
- Investigators to ensure that all witness officers provide statement. Supervisors will ensure that reports list all officers involved or on scene, and document any medical treatment or refusal of medical care.
- Lieutenant or higher will review each investigation conducted by CPD supervisors and identify any deficiency and require corrections. CPD supervisors to be held accountable for quality of investigations. Appropriate non-disciplinary or disciplinary action will be taken if investigations are not thorough, properly adjudicated, or where appropriate corrective action is not recommended.

## **2. Status**

There were no changes in policies or procedures with respect to the investigation of force incidents during this quarter.

## **3. Assessment**

### **a. Policy**

The CPD's policies on investigating Use of Force incidents comply with the MOA.

### **b. Review of Sample of Force Investigations**

During this quarter, the Monitor Team reviewed 37 investigative files depicting Use of Force incidents (including Taser deployments, but excluding hard hands without injury). We determined:

- Supervisors were notified by officers who were involved in a use of force incident, and the supervisors responded to the scene to conduct a use of force investigation
- In only one case was an incident investigated by a supervisor who authorized the use of force. In that case, the supervisor realized that this was against policy part-way through his investigation, and turned the investigation over to another supervisor [IIS Tracking number 04-029]
- Where subjects of force made a complaint of excessive force or other violation, supervisors completed complaint forms and faxed them to IIS [The exception to this was Tracking Number 2004-0145]
- The investigations documented medical care provided or the refusal of medical care
- We also noted that in many of the Taser investigations, the investigating supervisors used as an outline for their interviews with the officers and the subjects a set of questions provided during Taser training. These questions helped to organize the interviews and ensure coverage of important topics. Supervisors do need to follow up on the answers to these questions and explore additional issues where appropriate, however

- The Use of Force Reports (Form 18) were reviewed and signed by a CPD official at the rank of lieutenant or higher. Many of the investigations also had separate written memoranda by Command personnel with an assessment of the force used and the investigation of force. In one investigation, Command determined that the supervisor interviews were not appropriately organized, and counseled the sergeant to use the Taser questions provided in training. [Tracking Number 2004-0145]

At the same time, we found:

- CPD supervisors did not always evaluate the basis for the initial stop or seizure, and determine whether the officer's actions regarding the stop and seizure were within policy [Tracking Number 2004-0140]
- The investigating supervisor did not always interview all of the relevant witnesses or officers [Tracking Numbers 2004-0084, 2004-0137, 2004-0178]

Based on these observations, the CPD is in partial compliance.

## **C. Review of Critical Firearms [MOA ¶¶ 32-34]**

### **1. Requirements**

- Critical Firearms Discharges. The CPD investigations will account for all shots, and locations of officers discharging their firearm. The CPD will conduct appropriate ballistics or crime scene analysis, including gunshot residue or bullet trajectory tests.
- A Firearms Discharge Board (FDB) shall review all critical firearms discharges; review IIS and CIS investigation for policy compliance, tactical and training implications. The FDB will prepare a report to the Chief of Police. The FDB will determine (a) whether all uses of force during encounter were consistent with CPD policies and training; (b) whether the officer(s) used proper tactics; (c) whether lesser force alternatives reasonably were available.
- The policy for the FDB shall include: a review within 90 days from the end of the criminal investigation; FDB to act as quality control; authorize recommendations to the Chief of

Police; require annual review for patterns, with findings to the Chief of Police.

## **2. Status**

There were three firearms discharges at suspects in the first quarter of 2004. All three of these incidents were investigated criminally by CID and are currently being investigated administratively by IIS. When the administrative investigation is completed, the Firearms Discharge Board will review the incidents. In addition, the investigation of a firearms discharge from November 2003 was completed and a Firearms Discharge Board was scheduled to begin work on March 22, 2004. The Firearm Discharge Board has completed the hearing process for this discharge, and the Board's report is pending final review and approval. Since April 1, 2004, there have been two additional firearms discharges.

## **3. Assessment**

The CPD's policy on critical firearms discharges complies with the MOA. Because the Firearms Discharge Board's review has not completed its work on the three discharges in the first quarter of 2004 and the discharge from the fourth quarter of 2003, the Monitor is unable to assess compliance in this quarter. We do note, however, that it appears the CPD has not been able to meet the requirement that the Firearms Discharge Board review a critical firearms discharge within 90 days of the end of all criminal reviews of the incident, absent exceptional circumstances.

## **IV. Citizen Complaint Process**

### **A. Openness of Complaint Process [MOA ¶¶ 35-38]**

#### **1. Requirements**

- Publicity program for complaint process
- Availability of complaint forms, informational brochure
- Complaints may be filed in any form; intake officers not to opine on veracity or mental capacity. Complaint form completed for every complaint
- Every complaint to be resolved in writing

- Each complaint gets a unique identifier that will be provided to the complainant, and each complaint is tracked by the type of complaint
- Copies of allegations filed with the Citizen's Police Review Panel (CPRP), the Office of Municipal Investigations (OMI), Citizen Complaint Authority (CCA), Human Relations Commission referred to IIS within five (5) days

## **2. Status**

There were no changes in procedures regarding complaint intake during this quarter.

## **3. Assessment**

As required by the MOA, the CPD accepts complaints in any format, including in person, by mail, from the CCA or stemming from a supervisor's investigation of a use of force incident. The CPD also accepts third party complaints. Our review of complaint investigations generally did not reveal barriers to filing a complaint or discouragement by officers of persons seeking to make a complaint against a member of the CPD. In one CCRP case, a complainant alleged that when he went to the District to make a complaint during the first shift, he was told to come back to speak to a second shift supervisor. The desk officer states that she gave the complainant a complaint form and asked him to have a seat until a supervisor responded in to the District to speak with him. The officer states that the complainant waited, but then left before the supervisor arrived. The CCA referral states that complainant was given a complaint brochure.

The CPD has also audited the availability of complaint forms in CPD Districts and in police vehicles and found that the forms are available as required.

From the information reviewed in this quarter, it appears that the CPD is in compliance with the complaint intake provisions of the MOA.

## **B. Investigation of Complaints [MOA ¶¶ 39-50]**

### **1. Requirements**

- Preponderance of evidence standard; City will develop appropriate training

- Officers who used spray or force, or authorized the conduct at issue, may not investigate the incident
- All relevant evidence to be considered
- No automatic preference of officer's statements; investigators will attempt to resolve inconsistencies; no leading questions; all officers on the scene are required to provide a statement
- All relevant police activity, including each use of force, will be investigated; searches and seizures will be evaluated; investigations are not to be closed simply because a complaint has been withdrawn
- Conviction of the complainant will not be used as evidence of the appropriateness of the action of the CPD officer
- Complainant to be kept informed
- IIS to investigate complaints of force, pointing firearms, searches, discrimination
- Citizen Complaint Resolution Process (CCRP) complaints will be fully investigated
- CCRP complaints will be investigated by chain of command, with report. District or unit commander will evaluate investigation
- For IIS Investigations:
  - tape all interviews with complainants, involved officers, and witnesses
  - interviews at convenient times
  - prohibit group interviews
  - notify supervisors of complaints
  - interview all appropriate CPD officers, including supervisors
  - collect and analyze all appropriate evidence, canvass scene for witnesses, obtain medical records
  - identify material inconsistencies
- Report on investigation to include a summary, proposed findings and analysis

- Investigation to be complete within 90 days, absent exceptional circumstances.

## **2. Status**

There were no changes to CPD's policy for handling citizen complaints, Procedure 15.100, during this quarter.

One concern we raised in our previous Reports is that discrimination complaints were being handled by field investigations and the CCRP process, rather than by IIS investigations, as required by the MOA and by CPD procedure. Since April 1, 2004, IIS has been investigating all discrimination complaints.

In March 2004, the CPD requested a revision to the MOA allowing certain discrimination complaints to be handled through the CCRP process. Where an allegation of discrimination has "some corroborating evidence to support the assertion that the action or inaction by Department personnel was based upon some form of racial bias" the allegation would be investigated by IIS. Where there is "no corroborating evidence" that the police action was based on some form of bias, the allegation would be investigated in the field and handled through the CCRP process. (Emphasis in CPD original). The CPD believes that some discrimination complaints are best resolved through CCRP. As part of this process, a meeting is held between the complainant, the involved officer, and the officer's supervisor. The CPD asserts that these meetings can resolve some of the misconceptions and inferences involved in discrimination complaints.

The Department of Justice declined to make the modification at that time, but expressed a willingness to consider the modification at a later date.

## **3. Assessment**

The Monitor Team reviewed nine IIS citizen complaint investigations, ten CCRP field investigations of citizen complaints, and nine CCA complaint investigations this quarter.

### **a. IIS investigations**

A number of IIS investigations were thoroughly conducted [Tracking Numbers 03-257, 04-043, 04-055, 04-073]. Our review of IIS investigations revealed MOA compliance on the following issues:

- IIS is now reviewing District use of force investigations
- There were no group interviews conducted
- The CPD properly identified and investigated misconduct other than the violations alleged in the complaint [Tracking Number 03-257]
- Only one case we reviewed was investigated by a supervisor who authorized the use of force or conduct at issue in the complaint. [Tracking Number 04-029]
- As a general matter, IIS investigators were not asking leading questions of officers

We noted that improvements are needed in the following areas:

- Additional follow-up questions should have been asked, or witnesses and officers interviewed. [Tracking Numbers 04-029, 04-070]
- The IIS investigators ask probing questions in their interviews (e.g., regarding the initial stop and seizure, or about the details of the use of force), but the issues raised by these questions were not addressed in the investigations' write-up or findings [Tracking Numbers 03-137, 03-194 and 03-195]

### **b. CCRP investigations**

Our review of CCRP cases indicates that complaints were: properly investigated as CCRP cases; resolved in writing, and resolved with one of the four dispositions required by the MOA; assigned a unique identifier and tracked in the complaint system; conducted by a supervisor who was not involved in the conduct that precipitated the complaint; completed before a resolution meeting was scheduled; and signed by the District Commander. All of the involved officers and witnesses were interviewed, and all relevant police activity was investigated. For each case, a report was written that included a description of the incident, a summary of the

evidence, and findings and analysis (although in two of the 10 cases, the analysis was fairly limited).

### **c. Time period for investigations**

Twenty eight of 74 IIS investigations completed in the first quarter of 2004 took over 90 days to complete. The CPD has not provided information regarding these cases and whether there were extenuating circumstances that caused the delays.

According to the data provided by the CPD, 11 of the 77 CCRP cases completed this quarter took over 90 days to complete. There were an additional five cases for which data was not provided.

## **C. Adjudication of Complaints [MOA ¶44-45]**

### **1. Requirements**

- Every allegation to be resolved with one of four determinations – unfounded, sustained, exonerated, not sustained
- Unit commanders to evaluate each investigation to identify problems and training needs

### **2. Status**

The City has revised the CCRP process so that the MOA complaint closure terms [sustained, not sustained, unfounded, exonerated] are applied to complaints adjudicated through the CCRP process. The investigating supervisor continues to determine whether the officer's actions "met" or "didn't meet" CPD standards. However, the Bureau Commander reviewing the CCRP file now determines which of the closure terms is appropriate prior to the file being sent to the Police Chief for final review. Procedure 15.100, Citizen Complaints, was revised to reflect this change, effective July 8, 2003.

The CPD reports that there were 66 CCRP complaints involving 73 allegations that were closed in the first quarter of 2004 with the following results:

Sustained	10
Sustained Other	0
Exonerated	14
Not Sustained	25

Unfounded	23
Case referred to IIS	1

The CPD also reports that there were 74 investigations closed through IIS in the first quarter of 2004. Those cases were closed as follows:

Sustained	32
Sustained Other	0
Exonerated	2
Not Sustained	19
Unfounded	21

### **3. Assessment**

The City is in compliance with the requirement that every complaint be closed with one of four dispositions: sustained, not sustained, unfounded or exonerated.

## **D. Investigations by the CCA [MOA ¶¶ 51-56]**

### **1. Requirements**

- The CCA is to assume all of the responsibilities of the Office of Municipal Investigation (OMI) within 120 days from the date of the Agreement
- Copies of all complaints, no matter with which office they are filed, will be directed to the CCA; the CCA is to have jurisdiction over complaints of excessive force, pointing firearms, unreasonable search or seizure, or discrimination; the CCA shall have sufficient number of investigators, with a minimum of five
- CPD officers must answer CCA questions; CCA director to have access to CPD files and records
- City to develop procedures to coordinate parallel investigations
- City will take appropriate action on CCA completed investigations

- CCA will complete investigations within 90 days; City Manager to take appropriate action within 30 days of CCA completion of investigation

## **2. Status**

During this quarter, after a national search, the City and the CA partners collaboratively participated in the selection of the new CCA Director. Mr. Wendell France began his employment with the City on April 25, 2004. Mr. France is a retired major from the Baltimore Police Department and has previously served as a police expert with the Department of Justice. In addition, the CCA hired its fifth investigator, an individual mutually selected by the Parties.

The new CCA Executive Director is working with the CCA Board and CCA investigators to institute new standards for investigations, and protocols for Board review of investigators' reports. In particular, the CCA Director has focused on standards for investigating officer-involved shootings and in-custody deaths. Mr. France has also developed a draft template for investigative reports and findings.

## **3. Assessment**

### **a. General Operations**

We are encouraged that the CCA now has a full time executive director, and we believe he has made a good start in addressing CCA investigative standards. The City is in compliance with these provisions of the MOA.

### **b. Sample Investigations**

During this quarter, we reviewed the investigative files in a sample of seven CCA investigations. Summaries of those investigations are contained in Chapter Four. What follow are our general observations:

- Officers are responding to the CCA offices to be interviewed
- CCA has access to CPD records
- Parallel investigations by the CCA and the CPD do not appear to be impairing the effectiveness of either investigation

- The CCA investigations include an investigator's report, summaries of interviews, descriptions of evidence, and conclusions
- The investigative files are generally well-organized and thorough. [Tracking Numbers 03-385, 03-524]

CCA has used various checklists and forms to ensure that the investigations are well managed and thorough. These include: Case Checklist; Scheduling Witness Form; Contacting Witness Form; Case Status Report; Other Evidence Form; and Case Contacts list.

There are also areas where we believe improvements are needed:

- Investigators need to make efforts to resolve material inconsistencies in witness statements, follow up on relevant areas of inquiry, and make credibility determinations. [Tracking Numbers 03-494, 03-509]

Based on data provided by the CCA, it appears that the City Manager is taking action on completed CCA cases ("agreeing" or "agreeing in part" with CCA recommendations), as required by the MOA and CA. We have requested data regarding the actions then taken by the CPD with respect to discipline to determine whether the City is in compliance with the provision requiring the City to take "appropriate action, including imposing discipline and providing for non-disciplinary action where warranted." We have not received this data yet, and so cannot make a compliance determination on that requirement at this time.

## **V. Management and Supervision**

### **A. Risk Management [MOA ¶¶ 57-64]**

#### **1. Requirements**

Under the MOA, the CPD is required to enhance and expand its risk management system by creating a new "computerized, relational database." The CPD is to use the data in this system "to promote civil rights and best practices, manage risk and liability, and evaluate the performance of CPD officers."

- The information in the Risk Management System is to include:
  - uses of force

- canine bite ratio
  - canisters of chemical spray used
  - injuries to prisoners
  - resisting arrest, assault on a police officer, and obstruction charges, where a use of force has occurred
  - critical firearms discharges
  - complaints, dispositions
  - criminal and civil proceedings against officers
  - vehicle pursuits
  - pointing of firearms (if added)
  - disciplinary actions
- The CPD must develop a plan for inputting historic data now in existing databases (Data Input Plan)
  - The CPD must develop a protocol for using the risk management system, subject to Department of Justice approval
  - The protocol will include the following elements:
    - data storage, data retrieval, reporting, data analysis, pattern identification, supervisory assessment, supervisory intervention, documentation, and audit
    - the system will generate monthly reports
    - CPD commanders, managers and supervisors must review, at least quarterly, system reports and analyze officer, supervisor, and unit activity
    - CPD commanders and managers must initiate intervention for officers, supervisors or units, based on appropriate “activity and pattern assessment” of the information in the system
    - intervention options are to include counseling, training, action plans; all interventions must be documented in writing and entered into the system
    - the data in system must be accessible to CPD commanders, managers and supervisors; they must review records of officers transferred into their units
  - Schedule for system development and implementation:
    - 90 days from April 12, 2002: issuance of RFP, with DOJ approval
    - 210 days from RFP: selection of contractor
    - 12 months from selection of contractor: beta version ready for testing

- 18 months from selection of contractor: computer program and hardware to be “operational and fully implemented”

## **2. Status**

In this quarter, the CPD obtained Department of Justice approval for both the ETS Protocol and Data Input Plan. A “beta test” of the system was conducted on June 21, 2004, at which both the Monitor Team and Department of Justice experts were present. The CPD expects the system to be up and running with “live” data on July 15, 2004.

According to Cincinnati’s June 12, 2004, Status Report, the CPD has developed the following ETS training schedule:

- **Administrator Training:** A four-day course that will cover administrator duties, trainer duties, and end-user responsibilities. This training was held between May 11 and 14, 2004.
- **Trainers:** A three-day course that will cover trainer duties and end-user responsibilities. Training was begun on May 17, 2004 and scheduled to end on June 4, 2004. Trainers have been selected from throughout the Department, and each trainer will be expected to instruct at least two courses for the end users.
- **End-user Training:** An eight-hour session with classes beginning on June 7, 2004. Sworn supervisors will be the first to be trained in both day and evening classes, to meet the projected go-live date of July 1, 2004. Civilian supervisor training will begin on June 29, 2004 and conclude on July 6, 2004.

Currently, the ETS vendor is finishing work on requested revisions to some of the data modules. Upon completion, conversion of data from the existing databases will begin.

While the ETS system is being developed, the MOA requires the CPD to use existing databases to monitor officer behavior. As we have noted in prior reports, the CPD maintains a manual risk management system known as the Department Risk Management System (DRMS). This system uses existing databases and a matrix of risk factors to identify officers who are subject to an administrative review. Officers who accumulate more than a certain number of points within a 12 month period based on this matrix are identified for review.

During this quarter, four officers exceeded the DRMS threshold for review. In each instance, the supervisor met with the officer and reviewed the officer's incidents and history. For one of the officers who had been involved in several uses of force (including one for which he received a sustained violation and a 56 hour suspension), a detailed action plan was developed that included:

- Assigning the officer to ride with a senior officer; the senior officer was picked "because of his calm professional demeanor and excellent communication skills"
- The officer will ride as cover officer for the first month; in the second month he will ride as the contact officer, to work on his verbal skills
- The officer is to act on his senior partner's orders in using force; he should only resort to force on his own initiative if he or his partner are in physical danger
- The officer will be requested to voluntarily see the police psychologist

### **3. Assessment**

#### **a. Protocol and Data Input Plan**

There has been a great deal of progress toward implementation of the ETS system. The CPD is now in compliance with the MOA requirements for the ETS protocol and data input plan. The Monitor will assess the CPD's use of the ETS system and implementation of the requirements of the ETS protocol as the system becomes operational in the next quarter.

#### **b. Manual Risk Management System**

Based on the data provided by the CPD, the CPD is in compliance with this requirement.

### **B. Audit Procedures [MOA ¶67-69]**

#### **1. Requirements**

- CPD to develop a protocol for audits

- Regular audits of the citizen complaint process and Integrity audits of IIS investigations
- Meetings with prosecutors to identify officer performance issues

## **2. Status**

The Inspections Section conducted its quarterly audit of the CCRP process and reported its conclusions in a memo dated April 16, 2004. According to this memo, the audit showed that:

- Each District/Section/Unit accurately completed the required forms, logged the complaints into the CCRP database and maintained the files in a secure area
- The investigating supervisors did thorough investigations and notified the complainants in a timely manner
- The Citizen Feedback/Complaint forms were also completed and forwarded to Patrol Administration
- All District/Section/Units have forwarded their 2003 CCRP files to the Internal Investigations Section.

The Inspections Section was not scheduled to conduct its semiannual audit of IIS investigations this quarter.

## **3. Assessment**

In past Reports, we have found the CPD in compliance with these requirements based on the SOPs of the Investigations Section, setting out the standards for CCRP and IIS audits, and on the fact that the CPD conducted the required audits as scheduled. We did not, however, review the thoroughness of audits themselves, or examine the underlying files that were audited.

During this quarter, the Monitor Team met with the Inspections sergeant responsible for conducting the quarterly CCRP audits. The audit for this quarter did involve a review of a sample of CCRP investigations from each of the five Districts and from other units. The sergeant stated that he reviewed the investigative files to ensure that all appropriate witnesses were interviewed, that relevant evidence and reports were obtained, and that the outcome was justified by the investigation. There was limited documentation of which files were

reviewed, however, and how the audit was conducted. Audit checklists were not used. Just as important, the audit did not involve contacting the complainants to evaluate “whether the actions and views of the citizen were captured correctly in the CCRP report,” as required by the MOA.

For these reasons, the Monitor determines that the CPD is in partial compliance with the audit requirements. Full compliance will require an effort to contact complainants who have participated in the CCRP process.

## **C. Video Cameras [MOA ¶¶ 70-72]**

### **1. Requirements**

The MOA requires that all patrol cars be equipped with mobile video recorders (MVR). These MVRs are to be used in the following situations:

- Mandatory activation of MVR for all traffic stops
- Recording of consent to search, deployment of drug sniffing canines, and vehicle searches
- Recording of violent prisoner transport, where possible
- Supervisors to review all tapes where there are injuries to prisoners, uses of force, vehicle pursuits, citizen complaints
- CPD to retain and preserve tapes for 90 days, or as long as investigation is open
- If stop is not recorded, officer to notify shift supervisor
- Periodic random reviews of videotapes for training and integrity purposes; supervisors are to keep a log book of these reviews
- Random surveys of equipment are to be conducted

### **2. Status**

The CPD received a congressional appropriation of \$371,000 to purchase 62 Digital Video Data (DVD) units with the supporting hardware and equipment. A purchase order for these units has been approved, and the Fleet Unit anticipates delivery and installation of these units shortly. The Department is also hoping to fund the purchase of 178 additional units to digitally equip the remaining cruiser fleet. The CPD hopes to have those units purchased and installed by the end of 2004.

In our last Report, we noted that while the CPD appears to be conducting the required random reviews of videotapes, it was unclear whether these reviews generated any outcomes, in terms of changes in tactics, training, counseling of officers or otherwise. In response, the CPD notes that it does not currently track the nature of interventions resulting from the random supervisory review of MVR tapes.

### **3. Assessment**

The CPD is still in partial compliance with these provisions of the MOA.

First, not all vehicles have cameras yet; complete outfitting of police vehicles with MVRs appears to depend on additional digital camera purchases.

Second, there continue to be cases where officers are not activating their MVRs during traffic stops. In addition, as we noted in our last Report, officers are required to activate the MVR “to the extent practical” when transporting violent prisoners. None of the cases we reviewed this quarter where chemical irritant was used on arrested individuals in back of the police car was captured on the MVR tape. We understand that these situations are rapidly evolving. That is why both the MOA and CPD policy state that videotaping is to be done “to the extent practical.” However, we believe that both officers and supervisors can benefit from documentation of these incidents. We encourage the CPD to emphasize in its training the value of the MVR in these situations.

#### **D. Police Communications Section [MOA ¶¶ 73-74]**

The CPD is in compliance with these provisions.

## **E. Discipline Matrix [MOA ¶¶ 75-76]**

### **1. Requirements**

- CPD to revise disciplinary matrix to increase penalties for serious misconduct violations, such as excessive use of force and discrimination.
- Where matrix indicates discipline, it should be imposed absent exceptional circumstances. The CPD shall also consider non-disciplinary corrective action, even where discipline is imposed.

### **2. Status**

In 2002, the CPD adopted a revised discipline matrix. The Department of Justice approved the revised discipline matrix, but stated that compliance would depend on actual implementation of discipline. In its letter to the City of Cincinnati, the Department of Justice stated:

“For the CPD to satisfy the increased penalty requirement of the MOA also depends on the exercise of considerable discretion. In response to the requirement to increase penalties for certain types of infractions, the CPD raised the maximum penalty that can be imposed for certain infractions, but has not changed the minimum sanction that can be imposed. Thus, the CPD will not have actually increased the penalty for these offenses if it habitually imposes the minimum disciplinary action allowed under the matrix.”

### **3. Assessment**

The CPD currently does not have the capabilities to track electronically the disciplinary penalties imposed in each case where a violation of policy has been sustained. We have requested discipline data from a sample of sustained IIS cases. We have also asked for information on the discipline imposed in cases where the CCA has sustained violations. However, we have not yet obtained this data. Because of this, we cannot make a determination regarding the CPD's compliance with these requirements.

## **VI. Training**

### **A. Use of Force—Management Oversight and Curriculum [MOA ¶¶ 77-81]**

#### **1. Requirements**

This section of the MOA requires the CPD to:

- Coordinate and oversee use of force training to ensure that it complies with applicable laws and CPD policies
- Designate the Academy Director with responsibility for:
  - the quality of training,
  - the development of the curriculum,
  - the selection and training of instructors and trainers,
  - establishing evaluation procedures,
  - Conducting regular (semi-annual) assessments to ensure that the training remains responsive to the organization's needs.
- Provide annual use of force training for all recruits, sworn officers, supervisors and managers
- Have the curriculum and policy committee regularly review use of force training and policies to ensure compliance with laws and policies

#### **2. Status**

The Training Academy staff continues to oversee the review and assessment of the Department's training needs and the development and administration of the training curriculum. Based on a review of staff reports and Training Committee minutes, Academy staff have documented their observations and recommendations, presented these to the Training Committee, and ensured appropriate follow-up action by modifying curricula to meet agency needs.

During this quarter, the Monitor Team observed Taser, firearms and MHRT training sessions. The Taser training was a continuation of the training provided to all officers prior to their being authorized to carry the Tasers in the field. The firearms training involved annual qualifications sessions, and the MHRT training session was developed to familiarize new officers with use of force options and special considerations involved in dealing with the mentally ill. This session was

tailored for some “lateral transfer” (or experienced) officers, formerly with the Cleveland PD, who recently joined the CPD and who were undergoing training as a group. A modified training academy process was developed, based on the fact that these are experienced police officers, to orient them to Cincinnati policies, procedures and expectations.

Ongoing use of force training continues to be provided during roll call sessions to all officers. The monthly scenario-based training sessions are based on written lesson plans developed by training staff and, as required, many of these incidents are derived from actual incidents and experiences of CPD officers.

### **3. Assessment**

The Monitor Team observed in-service and recruit training sessions, and reviewed Training Committee minutes and other training records. The Academy staff and Training Committee are meeting their responsibilities for evaluating the content and quality of use of force training, and ensuring that the training is responsive to the agency’s needs and consistent with Department policy and state law.

The CPD is in compliance with these requirements of the MOA.

## **B. Handling Citizen Complaints [MOA ¶82]**

### **1. Requirements**

The MOA requires the CPD to provide training on the handling of citizen complaints for all officers charged with accepting these complaints. The training must emphasize interpersonal skills so that citizen concerns and fears are treated seriously and respectfully. This training must address the roles of the CCRP, IIS, CCA and CPRP so that complaint takers know how and where to make referrals. For the supervisors who investigate and determine outcomes of citizen complaints, their training must include how to establish appropriate burdens of proof and evaluate factors related to establishing complainant and witness credibility. The objective is to ensure that their recommendations regarding the disposition of complaints are unbiased, uniform, and legally appropriate.

### **2. Status**

Nothing to report this quarter

**C. Leadership/Command Accountability [MOA ¶83]**

**1. Requirements**

The MOA requires that CPD Supervisors will continue to receive training in leadership, command accountability and techniques designed to promote proper police practices. Within 30 days of assuming supervisory responsibilities, all CPD sergeants are to receive this training, and it will be made part of the annual in-service training. This requirement acknowledges the important role leaders at all supervisory levels play in ensuring that an appropriate demeanor, behaviors, and tactics are used in the operations of the agency.

**2. Status**

Nothing to report this quarter

**D. Canine Training [MOA ¶84]**

**1. Requirements**

The MOA requires the CPD to modify and augment its training program. This includes the complete development and implementation of a canine training curricula and lesson plans that identify goals, objectives and the mission of the Canine Unit specified in the MOA. Formal training on an annual basis for all canines, handlers, and supervisors is also required, as is annual re-certification and periodic refresher training with de-certification resulting when the requirements are not met. Within 180 days of the MOA, the CPD was required to certify all in-house canine trainers.

**2. Status**

Nothing to report this quarter

**E. Scenario Based Training [MOA ¶85]**

**1. Requirements**

The CPD is required to ensure that training instructors and supervisors engage recruits and officers in meaningful dialogue regarding particular scenarios, preferably taken from actual incidents involving CPD officers. The goal is to educate the officers regarding legal and tactical issues raised by the scenarios.

## **2. Status**

Scenario-based training updates are regularly developed by Training staff and disseminated for presentation during roll call sessions. The new training updates are submitted by staff each month for review by the Monitor. As noted above, and as required by the MOA, the scenarios are frequently based on actual encounters and incidents experienced by CPD officers. The updates examine and address contemporary policing issues, legal and tactical considerations that are relevant, and provide a foundation for the discussion of options to weigh by the officers. The updates include written guidelines to be followed by the supervisors who are presenting the case to ensure there is consistency in the presentation and ensuing discussion.

## **3. Assessment**

The CPD remains in compliance with this provision. The Monitor Team will continue to periodically observe roll call sessions and other training where the scenarios are used to establish the Department's ongoing compliance with this requirement.

### **F. Revised Training Based on Review of Civil Lawsuits Pertaining to Officer Misconduct [MOA ¶86]**

#### **1. Requirements**

The MOA requires that the CPD periodically meet with the Solicitor's Office to glean information from the conclusion of civil lawsuits alleging officer misconduct with the purpose of using the information to develop or revise training. This requirement is related to Paragraph 85.

#### **2. Status**

Nothing to report this quarter

### **G. Orientation to the MOA [MOA ¶87]**

#### **1. Requirements**

The MOA requires the City and the CPD to:

- Provide copies of the MOA and explain it to all CPD and relevant City employees

- Provide training for employees affected by the MOA within 120 days of each provision's implementation
- Continue to provide training to meet this requirement during subsequent in-service training.

## **2. Status**

Based on the Monitor's previous reviews of the training curriculum and ongoing observations of training conducted, the existing and new employees are being provided with the required training. As new policies are developed and adopted, or existing policies are modified, the CPD includes that information in Staff Notes and communicates this through in-service training.

## **3. Assessment**

The City remains in compliance with this provision. The Monitor will continue to review the City's compliance with this provision whenever new policies are adopted or policy revisions take place. We do note in Chapter Three below that there are officers who are unfamiliar with the contents of the MOA and CA, and of the role of the Monitor. We encourage the Department to disseminate more widely information about the Agreements and the Department's efforts to implement them.

## **H. FTO Program [MOA ¶88-89]**

### **1. Requirements**

The MOA requires the CPD to develop a protocol to enhance the FTO program to include:

- The criteria and method for selecting FTOs
- Setting standards that require appropriate assessment of an officer's past complaint and disciplinary history prior to selection
- Procedures for reappointment and termination of FTOs at the Training Academy Director's discretion
- Reviewing FTOs at least bi-annually with recertification dependent on satisfactory prior performance and feedback from the Training Academy.

## **2. Status**

Consistent with the revisions to Procedure 13.100 (the Field Training Officer Program), the performance of individual FTOs is now being reviewed to establish whether they will be re-certified and continue in that role. This review includes an assessment of the FTO's complaint and disciplinary history, among other things.

The Monitor Team had an opportunity to observe Academy staff interact with FTOs when they were evaluating the progress of probationary officers who were experiencing difficulties in meeting minimum performance expectations and standards. The nature of the assessment and the issues discussed showed that efforts are underway to ensure that performance standards established for both FTOs and probationary officers are being adhered to. The probationary officers were dealt with appropriately and fairly and it was made clear to them that they must meet the agency's minimal expectations if they are going to be retained as CPD officers.

When the Academy supervisor met with the probationary officers to review their progress, he also took note of their feedback regarding the FTO program and comments regarding possible deficiencies in their training. There was clear reinforcement provided to the probationary officers regarding their personal responsibility for meeting expectations as CPD officers. There was also a full exploration by the supervisor, including an appropriate and timely review of the training files and documents, to assess whether the involved FTOs are meeting their responsibilities and organizational expectations related to the training they are providing.

## **3. Assessment**

The positive strides previously noted in the FTO program have continued. Training staff and the FTO coordinator have been diligent in implementing the protocols required. It appears the performance of the FTOs is now being evaluated and necessary information is being acquired to better assess the qualifications, skills and performance of the FTOs. Further review will be necessary over time to determine the level of compliance in this area.

## **I. Firearms Training [MOA ¶¶ 90-91]**

### **1. Requirements**

The MOA requires all CPD sworn personnel to complete mandatory annual re-qualification firearms training to include: satisfactorily completing all re-qualification courses plus achieving a passing score on the target shooting trials, professional night training and stress training to prepare for real-life scenarios. The CPD is required to revoke the police powers of those officers who fail to satisfactorily complete the re-certification.

The MOA also requires firearms instructors to critically observe students and provide corrective instruction regarding deficient firearm techniques and failure to utilize safe gun handling procedures at all times. CPD is required to create and implement an evaluation criteria checklist to determine satisfactory completion of recruit and in-service firearms training. For each student, the firearms instructors will complete and sign a checklist verifying satisfactory review of the evaluation criteria.

### **2. Status**

An on-site review of firearms training occurred during this quarter. The training session observed involved a full day session with motor officers. The course included basic re-familiarization techniques, reinforcement of officer safety procedures, and a course of training that was developed specifically for the motor officers. This course was based on the needs identified by the motor officers and involved unique firearms positions and shooting techniques based on the motorcycles. It also included firearms training in a controlled lighting situation where nighttime conditions can be replicated.

Based on discussions with the trainers at the range and observing the training that was being conducted, it is evident staff has tailored the firearms training to the specific roles or assignments of the officers. Different courses are being, or have been, developed for patrol officers, the mounted horse officers, and canine officers. The range and academy staff also noted a decline over the past three years in the number of personnel who are not meeting the qualifying score requirement. Staff noted that implementation of the MOA provisions appears to have been a contributing factor, because there are now clearly articulated consequences attached to the failure to qualify (suspension of police powers and further training required). Training staff will be providing the Monitor Team with data reflecting the decline in failure rates.

### **3. Assessment**

Based on a review of firearms training records and observations of training, the CPD is in compliance with those elements of §§ 90-91 that the Monitor Team has observed to date. Further on-site observations and audits will be completed to confirm that all requirements are being met.

## **CHAPTER THREE. COLLABORATIVE AGREEMENT**

Through the Collaborative Agreement (CA), the Parties endorsed community problem-oriented policing (CPOP) as the framework for policing in the City of Cincinnati. The Parties are jointly accountable under the CA for implementing CPOP.

### **I. Implementation of CPOP [CA ¶29]<sup>5</sup>**

The Parties have made important incremental steps in advancing CPOP implementation in Cincinnati. This quarter, the Parties delivered their jointly developed CPOP training. The Community Police Partnering Center hired six outreach staff, including one outreach supervisor. Joint CPOP teams are now operating in 11 Cincinnati neighborhoods and outreach workers regularly conduct community outreach to introduce communities to the Partnering Center. Also during this quarter, the CPD prepared an RFP for a new records management system. This is an important step towards upgrading the information systems in the CPD.

Also notable this quarter was the absence of improvement on several fronts essential to the implementation of the CA:

- Refining the CPOP problem tracking system or using a different system to track problem-solving efforts in a meaningful way
- Boosting the quality of the descriptions already in the CPOP problem tracking system
- Identifying best practices and high quality problem-solving examples for inclusion in CPOP training
- Planning community forums to discuss use of force, alternatives to it, requirements of the MOA and the CA, police response to individuals who are mentally ill or under the influence of drugs or alcohol, as well as the University of Cincinnati Vehicle Stop Study and the issue of fair and equitable policing

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<sup>5</sup> Cincinnati initiated a process to further define the requirements of paragraph 29, and proposed for review by the Plaintiffs and FOP a set of draft “deliverables” for each of subsections of paragraph 29. The Plaintiff’s responded to this draft and the Parties have not reached agreement on what standards should be used to measure compliance with paragraph 29 (at this point, the City awaits a response from Plaintiffs to its latest proposal). We support the process of defining how CPOP should be implemented through agreement among the Parties. We note, however, that our assessment of implementation and compliance would be the same whether we use the City’s definition of deliverables or the Plaintiff’s.

- Submitting quarterly reports on problem-solving progress of special units within CPD (in addition to the quarterly reports submitted by District Commanders and the CPOP Coordinator)

Each of these items is one that we have stressed in prior Reports. The Monitor will request a mid-July meeting with the Parties to discuss progress on these specific portions of the CA.

In the coming quarter, we expect the Parties to:

- Submit revised officer job descriptions and personnel evaluations for the purpose of aligning them with CPOP principles
- Examine current personnel staffing models within the CPD in light of the Department's movement to CPOP
- Submit by August 5, 2004, its 2<sup>nd</sup> CPOP Annual Report describing progress and challenges during the 12 months leading up to the report.

### **1. Requirement 29(a)**

The City, in consultation with the Parties, shall develop and implement a plan to coordinate the work of City departments in the delivery of services under CPOP.

### **2. Status**

In the second quarter of 2003, the Parties formally adopted a CPOP coordination plan, entitled the "City of Cincinnati Plan for Community Problem Oriented Policing." Since then, liaisons from the Departments of Buildings and Inspections, Public Services, Community Development and Planning and Health, Parks and Recreation, Fire, Water Works, and Metropolitan Sewer District received training on their roles and responsibilities as resources to the Problem Coordinators (the CPD member or Partnering Center staff assigned to a CPOP team).

### **3. Assessment**

The City remains in partial compliance of this section of the CA. As we noted in prior Reports, as departments and agencies are now on-line, we expect the Parties to report on the quality, timeliness, and results of inter-agency collaboration vis-à-vis the projects undertaken by

the pilot CPOP teams (e.g., Are inter-agency liaisons responding in a timely way? How long does it take to board up a problem property? Has the Health Department been responsive in a timely way to problem properties with health code violations? In what ways have CPD officers relied on the Community Development and Planning Agency? Should the City try to enlist certain County service deliverers, such as Social Services?).

The Monitor notes that during a recent ride-along, a District patrol officer arrested a man who had over 40 prior convictions, many, if not all arose from his condition as a chronic inebriate. Not surprisingly, he was arrested in front of the convenience store he frequents, as it is the source for his 40-ounce alcohol beverages. While inter-agency collaboration can be directed at problem locations, it can also be of use to address problem people. This may not be an isolated example of someone who should be the subject of a coordinated inter-agency effort that might include social service and mental health providers. It also illustrates the value of assessing the types of problems the inter-agency committee handles and its responsiveness to those problems, as well as an assessment of whether outcomes were achieved.

### **1. Requirement 29(b)**

The Parties will develop a system for regularly researching and making publicly available a comprehensive library of best practices related to CPOP.

### **2. Status**

A review of the CPOP website shows the addition of a “Problem-Oriented Policing Best Practices” tab, where several reports on crime control practices and evaluations of them are available. In addition, the Parties have previously reported that the Partnering Center will assist the Parties in developing and disseminating a library of best practices. In this quarter, the Partnering Center has begun to provide resources and research to the neighborhood CPOP teams (see 29(e) below).

### **3. Assessment**

The creation of a “best practices” section in the CPOP website for publications is a positive development. As the Parties proceed with local problem solving projects, we look to the Parties to add write-ups of evaluated, successful Cincinnati projects to the “best practices” library.

As we have noted in past Reports, compliance with this CA section will depend on use of the CPOP website as a research tool in effective

problem solving. The problem solving cases submitted this quarter do not reflect the use of evaluated best practice research. For improvements in crime control strategies to be realized, we believe that the neighborhood officers, along with others in the CPD, need training on researching best practices on common crime problems. The Parties are in partial compliance with this section of the CA.

### **1. Requirement 29(c)**

The City, in consultation with the Parties, shall develop a continuous learning process through the CPD. Experiences with problem-solving efforts in the field will be documented and disseminated throughout the CPD and made available to the public. Problem solving will continue to be emphasized in (but not be limited to) academy training, in-service training, and field officer training.

### **2. Status**

The Parties' June 2004 Status Report included a summary of the CPD's Training Section activity (focused mostly on citizen academies), but there was no mention of any ongoing work related to this CA subsection.

In conversations with a number of officers during recent visits to Cincinnati, the officers were unaware of examples of problem-solving that they could review in their work.

### **3. Assessment**

We believe there are many ways in which problem solving can be incorporated into CPD training, and disseminated throughout the Department. The Monitor sees this section of the CA as linked with section 29(b) and hopes to see greater progress in this area in the next quarter. The Parties are not in compliance with this section of the CA.

### **1. Requirement 29(d)**

The Parties will research information on how problem-solving is conducted in other police agencies and disseminate research and best practices on successful and unsuccessful methods for tackling problems. The Parties will also disseminate information on analogous problem-solving processes used by other professions.

## **2. Status**

The Parties did not specifically report on progress on this item in their June 2004 Status Report.

## **3. Assessment**

This CA section is also linked to sections 29(b) and (c), as each of these require distinguishing between what works and what doesn't in crime control techniques. As noted above, the Parties added a "Problem-Oriented Policing Best Practices" tab to the CPOP website, where one can find seven documents, some containing evaluated case studies and others containing program evaluations. In the next quarter we hope to see additional evaluated efforts added to the website, perhaps by crime type (e.g., noise complaints, drug houses, open-air drug and prostitution markets) to facilitate their use in officer/outreach worker/community problem-solving. We reiterate our recommendation that the CPOP Committee develop a research and best practices plan with the assistance of appropriate experts in the field.

The Parties are in partial compliance with this section of the CA.

### **1. Requirement 29(e)**

The Parties, through the Community Partnering Program, will conduct CPOP training for the community and jointly promote CPOP.

## **2. Status**

There have been several important developments related to this provision.

First, the Community Police Partnering Center now has an executive director and six full-time outreach workers, one of whom is an outreach supervisor. The Center also has computers and internet and phone service.

Second, this quarter, outreach workers and CPD neighborhood officers met and reviewed the joint CPOP curriculum. The Partnering Center arranged a joint training opportunity for its staff and the CPD's neighborhood officers where they practiced delivering the training they are co-delivering in Cincinnati's communities. Several neighborhood officers attended and practiced with their Partnering Center peers. In addition, to increase the comfort level of CPD and Partnering Center staff in teaching the CPOP curriculum, both CPD and Partnering Center staff participated in training sessions at the Tri-State Regional Community

Policing Institute (RCPI) and the Community Building Institute at Xavier University.

Third, this quarter, outreach workers and neighborhood officers jointly delivered training to 15 new neighborhoods (Oakley, Hyde Park, Mt. Lookout, Kennedy Heights, East Price Hill, West Price Hill, Sedamsville, Riverside, Roselawn, Bond Hill, Paddock Hills, Winton Place, Mt. Airy, Carthage, and Columbia Tusculum). The Partnering Center developed an evaluation survey to assess whether the trainings are drawing non-traditional community members to the table. Follow-up meetings will be scheduled for these communities so they can select a crime/safety problem for analysis and countermeasures.

In addition, the Center's outreach workers have begun to staff CPD's previously trained CPOP neighborhoods, to aid in problem solving. The Partnering Center staff efforts include:

- Participating with Cincinnati Business District Downtown Safety Sector to identify a problem for action
- Providing the Over-the-Rhine team with drug market reduction resources, such as the U.S. Department of Justice publication entitled, Citizen Action for Neighborhood Safety: Community Strategies for Improving Quality of Life
- Arranging SARA training for residents of St. Anthony's Village. The residents are victims of crime and drug market violence, but are reluctant to engage for fear of drug dealer retaliation. District 1 Captain, Jim Whelen, is assisting in this effort
- Attending meetings of Evanston's Brooks Avenue Block Club, the team targets drug market buyers by writing down the license plates of cruising buyers. The team will mail postcards to the registered owners of the vehicles alerting the drive-in buyers that drug activity in the area is under surveillance
- Assisting Walnut Hills CPOP team by researching the effect of "Court Watch" on judges' sentencing of drug dealers
- Reviewing survey data (captured by University of Cincinnati graduate students) concerning middle school students' concerns about crime at several Cincinnati public schools

Finally, outreach staff and its executive director promoted CPOP through various means, including print and media outlets, neighborhood forum, and community newsletters.

### **3. Assessment**

The delivery of joint CPOP training and promotion of CPOP as a vehicle to address community crime/safety concerns is a significant milestone for the Parties. The training schedule this quarter was ambitious, as is the training schedule for the upcoming quarter.

The Monitor attended one of the joint CPOP community training sessions. The neighborhood officer and the outreach worker delivered a coordinated, skill-based training. The co-trainers were well-prepared and were well-received by the community audience. Other neighborhood officers and outreach workers observed the training as preparation for delivering joint training in the upcoming quarter. The outreach workers and neighborhood officers, in a discussion with a member of the Monitor Team after the training, expressed the view that the curriculum still required tweaking, and suggested ways to streamline the training to keep the audience's attention.

In the short period of time that neighborhood officers have worked with the outreach workers, there appears to be a growing respect between them. As more teams co-train, we expect that this feeling will solidify, as each group sees the benefits brought to the table by the other. Neighborhood officers have significant experience working with already-established community associations and are very familiar with their beats and the people in them. The outreach workers, although new, show much promise; many have backgrounds or prior work history in community outreach or safety issues. They are very good students of problem-solving and are familiar with some of the problem-solving resources. The outreach supervisor has experience working with community groups in Cincinnati and has a wealth of knowledge about contacts in the city for getting things done.

With the integration of the joint training, even as it evolves and is refined, opportunities for outreach workers and neighborhood officers to collaborate on crime problems will expand. The key will be for these teams to bring the rigor of analysis and assessment to the problems selected for action.

Analysis will tighten the understanding of why a problem exists in one location and not another (one apartment building and not another, one convenience store and not another nearby) and build up reliance on already-established research on the role of "place managers" in

countering crime. To do so, neighborhood officers should have schedules that allow them to observe crime series as they occur (crime series in the sense of an apartment complex with scores of calls for service a year, convenience stores with chronic loitering problems, parks where drug dealers or drinkers hang out in the evening). Currently, neighborhood officers work 8 a.m. to 4 p.m. shifts, Monday through Friday. While this allows officers daytime hours to contact other city workers, it precludes them from regularly witnessing many of the crime problems listed in the Parties' Status Report as community concerns. If some of their schedules began later in the day, perhaps at 2 p.m., they would have time to contact other city workers and time to observe the crime problems they seek to reduce.

By way of example, many drug markets surge on Friday and Saturday evenings as weekend partiers add to the customer base of chronic users. With weekends off, neighborhood officers are hamstrung in their understanding of problems such as these, and are left to ask patrol to pay special attention to a corner or a market or a problem through directed patrol, which offers only a limited response from the crime control toolkit.<sup>6</sup> Drawing examples from the CPD's list of crime/safety problems of community concern from this quarter's CA Status Report, it is clear that nighttime crime is a priority for many neighborhoods:

- Mount Adams: disorderly bar patrons; noise and amplified music from alcohol establishments
- Pendleton: drug sales
- West End: drug sales, assaults and robberies
- Kennedy Heights: drug activities
- Linwood: drug activities
- Pleasant Ridge: drug activities
- Madisonville: drug activities
- Mt. Lookout: disorderly weekend bar patrons

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<sup>6</sup> Neighborhood officers flex their shifts or receive overtime to attend a weeknight or weekend community meeting or neighborhood event (as these are almost exclusively on weeknights or weekends), but this is done on an *ad hoc* basis and offers neighborhood officers only a limited view of the crime problems they are asked to resolve.

- Sedamsville: youth loitering at night
- East Price Hill: drug activities
- English Woods: drug sales; loud, disorderly parties
- Fay Apartments: drug sales; gunshots; disorderly crowds
- Corryville: large weekend crowds outside of Vertigos nightclub; drug dealing
- North Avondale: drug sales; loud noise; prostitution; assaults
- CUF: loud disorderly parties
- Northside: drug activities; unruly youth

Nighttime crime and disorder also highlights the need for patrol officers to become engaged in problem-solving, not just call answering, pedestrian and car stops, and directed patrol activities.

As the joint training rolls out in additional areas of the city, we look forward to seeing evidence of consistent, quality problem-solving. With the commencement of jointly delivered CPOP training, the Parties are in compliance with this section of the CA.

### **1. Requirement 29(f)**

The Parties shall coordinate efforts through the Community Partnering Program to establish on-going community dialogue and structured involvement by the CPD with segments of the community, including youth, property owners, businesses, tenants, community and faith-based organizations, motorists, low income residents, and other city residents on the purposes and practices of CPOP.

### **2. Status**

Last Fall, the Parties tasked the CPOP Committee with developing a community dialogue/interaction plan, with implementation beginning in June 2004. To date, it does not appear that the Parties have developed this plan.

Although the Parties have not coordinated their efforts on community dialogue, it does appear that the Parties separately have initiated community engagement efforts. The CPD Training Division held

several citizen academies this quarter for mental health professionals, religious leaders, and students, and met with citizens to improve CPD's recruitment of women and African Americans. The CPD's Youth Services Section met with school staff and community members on youth-related issues, including truancy, traffic concerns, and crime. The CPD joined with the Lighthouse Youth Services to target youth involved in minor activity or at risk. The CPD also sponsored citizen patrol units in more than 20 neighborhoods.

The Partnering Center attended numerous community events, sharing information about the Center and ways for citizens to become involved. In addition, this quarter the Center shared information about a CPD-developed program that pairs an interpreter with Spanish language 911 callers.

As part of the Parties' "trust building" efforts, the Plaintiffs have been tasked with planning a joint forum in the community on the Collaborative Agreement. As of the last all-Party meeting, this forum is being scheduled for mid-July.

### **3. Assessment**

The activities cited above are good examples of structured interaction with segments of Cincinnati's population. During these community-focused activities, the Parties should discuss the Collaborative Agreement, CPOP, and the joint work in neighborhoods.

In this next quarter, we also expect to see a coordinated plan outlining additional community interaction, such as joint forums in the community addressing issues of fair and equitable policing, police use of force, alternatives to use of force, police response to the mentally ill, and police response to those under the influence of drugs or alcohol.

The Collaborative Agreement establishes a historic change in the style of policing for the Cincinnati Police Department. As part of this change, the CA calls for dialogue and community interaction around CPOP, a collaborative approach to crime reduction.

The Parties are in partial compliance with this section of the CA.

#### **1. Requirement 29(g)**

The Parties shall establish an annual award recognizing CPOP efforts of citizens, police, and other public officials.

## **2. Status**

The Parties did not report on progress on this item in their June, 2004 Status Report.

## **3. Assessment**

With joint CPOP training just beginning, we recognize that it may be early for an awards ceremony. Currently, the Parties are not in compliance with this section of the CA.

### **1. Requirement 29(h)**

The City, in consultation with the Parties, shall develop and implement a communications system for informing the public about police policies and procedures. In addition, the City will conduct a communications audit and a plan for improved external communications. The communications strategy must be consistent with Ohio Law.

## **2. Status**

This section has two parts: (1) informing the public about CPD policies and procedures, and (2) acting on an approved plan of improving external communications. With respect to the first, CPD policies and procedures are accessible from the City website and will be available on the CPOP website. On the second, the Parties were expected to develop a communications plan this past spring through its CPOP Committee.

## **3. Assessment**

As policies and procedures are available to the public on the CPD's new website, <http://www.cincinnati-oh.gov/cpd>, the City is in compliance with this part of paragraph 29(h).

There appears to be no progress on the communications plan, however, and the Parties are not in compliance with this component of paragraph 29(h).

We have an added concern, based on ride-alongs and conversations with CPD employees over the last 18 months. It seems that many CPD officers are unfamiliar with the contents of the Collaborative Agreement, nor are they aware of progress in implementing sections of the Agreement. While the CA, like the CPD's policies and procedures, can be found in the "References" section of CPD's website, we believe providing employees with additional information (perhaps in

the form of a memo from the Chief) about the direction of the Department and required changes under the Agreement would be beneficial. The Monitor's Reports, which mark progress and gaps in progress, also should be readily available to employees. These Reports should be maintained alongside the Collaborative Agreement and the Memorandum of Agreement, clearly visible on the website's homepage.

**1. Requirement 29(i)**

The CPD will create and staff a Community Relations Office to coordinate the CPD's CA implementation.

**2. Status**

The CPD established and staffed a Community Relations Unit (CRU) in 2003. The CRU is a division of the Police Relations Section. The CRU Manager reports to the Executive Manager of Police Relations and assists in coordinating the implementation of the CA. Earlier this year, the CRU Manager transferred to the Records Division. In our last Report, we asked the City for an update on the status of the CRU and its role in ensuring CA compliance.

**3. Assessment**

The Parties did not report on the CRU in their June 2004 Status Report. We are therefore unable to assess compliance with this paragraph at this time.

**1. Requirement 29(j)**

The Parties shall describe the current status of problem solving throughout the CPD through an annual report. Each Party shall provide information detailing its contribution to CPOP implementation.

**2. Status**

The CPD submitted its status report for 2003 last year. The 2004 annual status report is due August 5, 2004. The Plaintiffs have agreed to take the lead role in developing the report.

**3. Assessment**

The Parties are in compliance with this section of the CA.

## **1. Requirement 29(k)**

CPD District Commanders and Special Unit Commanders or officials at comparable levels shall prepare quarterly reports detailing problem-solving activities, including specific problems addressed, steps towards their resolution, obstacles faced and recommendations for future improvements.

## **2. Status**

This quarter, the City issued one report describing City of Cincinnati activities. The report contains activities under the following headings: Patrol Bureau (by District, and including sections on Citizens on Patrol Program, Safety Summits, and Cincinnati Human Relations Commission); Investigative Bureau (covering Community Response Teams); Training Section; and Youth Services Section.

Missing from the CPD report of activities is any report of problem solving activities by the following units and sections: Vice, Planning, Crime Analysis, Criminal Investigations Section (covering activities of homicide, personal crimes, major offenders, financial crimes units), Downtown Services Unit, Special Services Section (covering park unit, traffic unit).

## **3. Assessment**

Our prior reports outline the reporting requirements for this section and the important difference between reporting traditional law enforcement activity and problem-solving. Most of the activity described in the CPD's report falls in the former category.

For example, the report for the Investigations Bureau is limited to a description of arrest and seizure statistics from Community Response Team sweeps. Sweeps are a method of deployment and deployment is not problem-solving, even if some community input is obtained. Quarterly reports from Street Corner Narcotics and Community Response Teams should list specific problem locations, analysis conducted about the location and the drug market, the different countermeasures put in place to achieve longer term change at the location, as well as an assessment of the impact of those measures on that location. If the location is still an active drug market after an arrest sweep and seizures, then the response was ineffective in addressing the problem.

The City report does contain one clear example of problem-solving, located in the Youth Services Section. It describes an officer's efforts to

return a truant student to school. The effort contains all the elements of problem-solving.

- The officer met with the student and learned that the student suffered from depression due to family issues. The student's mother was out of work and the family was on the verge of eviction from their apartment
- The officer met with the student, her mother, and the school counselor to devise a plan and obtained the assistance of the Job and Family Services Office. The mother was offered job opportunities and counseling
- The student now attends school on a regular basis

The Monitor will request a meeting with the City for mid-July to discuss the content and format for reporting under this section of the CA. The CPD is in partial compliance with this section of the CA.

**1. Requirement 29(l)**

The Parties will review and identify additional courses for recruits, officers and supervisors about the urban environment in which they are working.

**2. Status**

In March 2004, the Parties proposed a timeline beginning in May 2004 for review of Academy courses and implementation of additional courses. Plaintiffs and the FOP agreed to meet with District Commanders and audit CPD training to recommend changes or additions. In the June 2004 Status Report, the Plaintiffs and the FOP report that they have not yet done this.

**3. Assessment**

The Parties are not in compliance with this section of the CA.

**1. Requirement 29(m)**

The Parties, in conjunction with the Monitor, shall develop and implement a problem tracking system for problem-solving efforts.

## 2. Status

Eighteen problem-solving reports are in the CPOP tracking system,<sup>7</sup> the same number as last quarter.

<b>Police District</b>	<b>CPOP Cases in Sept. 2003</b>	<b>CPOP Cases Added by Jan. 2004</b>	<b>CPOP Cases Added by Mar. 2004</b>	<b>CPOP Cases Added by June 2004</b>	<b>Total # of CPOP Cases Since Aug. 2003</b>
<b>Dist. 1</b>	<b>1</b>	<b>1</b>	<b>2</b>	<b>0</b>	<b>4</b>
<b>Dist. 2</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>2</b>
<b>Dist. 3</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1</b>
<b>Dist. 4</b>	<b>3</b>	<b>2</b>	<b>3</b>	<b>0</b>	<b>8</b>
<b>Dist. 5</b>	<b>1</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>3</b>
					<b>18 total CPOP cases</b>

## 3. Assessment

As we have noted since our September 2003 Monitor Report, the tracking system requires some improvements. The Monitor will ask to meet with the Parties in July to discuss potential enhancement. We recommend that the Parties review the Monitor's comments in the September 2003, January 2004, and April 2004 reports as preparation for our discussion.

The Parties are in partial compliance with this section of the CA.

### 1. Requirement 29(n)

The City shall periodically review staffing in light of CPOP. The CA requires ongoing review of staffing rather than a review by a certain deadline.

### 2. Status

The CPD has stated that it regularly reviews staffing to match workload requirements with resources. However, CPD has not provided

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<sup>7</sup> <http://cagisperm.hamiltonco.org/cpop/default.aspx>.

the Monitor with the details of how it does these reviews and the results of these reviews.<sup>8</sup>

In March 2004, the Parties stated that the CPOP Committee's Human Resources Workgroup would review staffing and other personnel matters (such as revised job descriptions) in light of the CA's requirements. The CPD has provided the Plaintiffs with raw calls for service data; however, this is not sufficient to determine staffing. The Parties' current status report makes no mention of progress on this section of the CA.

### **3. Assessment**

The Monitor again requests the current staffing formula (Personnel Deployment Reports, or PDRs), and copies of the material the Human Resources Workgroup will consider in assessing staffing alignment. The Monitor will make this an agenda item as part of the July meeting.

The City is not in compliance with this section of the CA.

#### **1. Requirement 29(o)**

The City shall review, and where appropriate, revise police department policies, procedures, organizational plans, job descriptions, and performance evaluation standards consistent with CPOP.

#### **2. Status**

In March 2004, the Parties stated that the CPOP Human Resources Workgroup would review CPD policies, job descriptions and performance evaluations, and would make changes in support of problem solving. The Parties' June 2004 Status Report states that the City is still in the process of developing these.

### **3. Assessment**

In our last Report, we suggested the importance of City coordination with the FOP and the Plaintiffs in developing these recommendations, as their participation can smooth the way to reform.

The Parties are not in compliance with this section of the CA.

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<sup>8</sup> The Monitor has made numerous requests that the CPD share the current formula it uses to determine District staffing, along with the numbers that accompany application of the formula in each of the five Districts.

### **1. Requirement 29(p)**

The City shall design and implement a system to easily retrieve and routinely search (consistent with Ohio law) information on repeat victims, repeat locations, and repeat offenders. The system shall also include information necessary to comply with nondiscrimination in policing and early warning requirements.

### **2. Status**

As noted in our prior Reports, the City expects to meet this requirement through the acquisition of a new Records Management System (RMS) and Computer Aided Dispatch (CAD) system. The City contracted with Gartner Consulting and in late 2003 began reviewing design specifications for a Request for Proposal (RFP). A draft RFP has been prepared and is being finalized by the City's Purchasing Department.

### **3. Assessment**

The City is not yet in compliance with this CA provision.

### **1. Requirement 29(q)**

The City shall secure appropriate information technology so that police and city personnel can access timely, useful information to problem-solve (detect, analyze, respond, and assess) effectively. The CA established February 5, 2003, as the deadline for development of a procurement plan, April 5, 2003, to secure funding, August 5, 2003, to procure systems, and August 2004 to implement any new purchases.

### **2. Status**

We refer the Parties to the Status section of 29(p) of this report.

### **3. Assessment**

The City has not met the deadlines in the CA for compliance with this requirement.

## **II. Evaluation Protocol [CA ¶¶ 30-46]**

### **1. Requirements**

The CA calls for a system of evaluation to track attainment of CA goals. This tracking serves as a “mutual accountability plan.” According to the CA, “[t]he term ‘mutual accountability plan’ is defined as a plan that ensures that the conduct of the City, the police administration, members of the Cincinnati Police Department and members of the general public [is] closely monitored so that the favorable and unfavorable conduct of all is fully documented and thereby available as a tool for improving police-community relations under the Agreement.”

The Evaluation Protocol must include the following components:

- Surveys
  - of citizens, for satisfaction and attitudes
  - of citizens with police encounters (neighborhood meetings, stops, arrests, problem-solving interactions), for responsiveness, effectiveness, demeanor
  - of officers and families, for perceptions and attitudes
  - of officers and citizens in complaint process, on fairness and satisfaction with complaint process
- Periodic observations of meetings, problem-solving projects, complaint process; with description of activity and effectiveness
- Periodic reporting of data to public, without individual ID, but by age, race, gender, rank, assignment and other characteristics. The data, to be compiled by the City’s 52 neighborhoods, are to include arrests; crimes; citations; stops; use of force; positive interactions; reports of unfavorable interactions; injuries to citizens; complaints
- Sampling of in-car camera and audio recordings; database of sampled recordings; study of how people are treated by police
- Examination of hiring, promotion and transfer process
- Periodic reports that answer a number of questions, including:
  - Is use of force declining, and is it distributed equally?
  - Is the complaint process fair?
  - Do officers feel supported?
  - Is problem solving successful?

- Are police-community relations improving?
- Is progress being made on issues of respect, equity and safety?
- Is safety improving?

## **2. Status**

In February 2004, the Parties selected RAND as the preferred vendor for the Evaluation Protocol. Because the initial RAND bid exceeded the available budget for the Evaluation contract, the Parties agreed to work with RAND to develop a revised scope of services consistent with the amount of funding available.

The revised scope of services proposed collection of data through seven areas of evaluation:

Survey Generated Data  
 Traffic Stop Analysis  
 Periodic Observations and Problem-solving Processes  
 Statistical Compilations  
 Evaluation of Video and Audio Records  
 Evaluation of Staffing  
 Evaluation of Reports

RAND and the City have not yet finalized the evaluation contract. There was one area of dispute regarding the revised scope of services that now appears to be resolved. RAND had proposed fielding the citywide surveys in all 52 neighborhoods, but aggregating the results into ten neighborhood “tracks” or groups. The Parties, particularly the FOP, insisted on reporting the survey data by the 52 individual neighborhoods. RAND has agreed to report the survey by all 52 neighborhoods. To keep the contract under the negotiated amount, however, RAND will reduce the frequency with which it reviews MVR videotapes and conducts observations.

## **3. Assessment**

The start of the Evaluation Protocol is of utmost importance if the mutual accountability provisions of the CA are to be meaningful. Valuable time has been lost already. We urge in the strongest terms the Parties to resolve this issue with RAND so that work under the Evaluation Protocol can be started. The Parties are not yet in compliance with the Evaluation Protocol provisions of the CA.

### **III. Pointing Firearms Complaints [CA ¶48]**

The investigations of complaints of improper pointing of firearms from March 2000 to November 2002 were forwarded to the Conciliator, Judge Michael Merz in July 2003. The Parties also submitted supplementary materials to Judge Merz for his review in making his decision under Paragraph 48. On November 14, 2003, Judge Merz issued his decision. Judge Merz determined that there has not been a pattern of improper pointing of firearms by CPD officers. Therefore, CPD officers will not be required to complete a report when they point their weapon at a person. The Parties are in compliance with the provisions of Paragraph 48.

### **IV. Fair, Equitable and Courteous Treatment**

The CA requires the Parties to collaborate in ensuring fair, equitable and courteous treatment for all, and the implementation of bias-free policing. Data collection and analysis are pivotal to tracking compliance, and training is essential to inculcate bias-free policing throughout the ranks of the CPD. The Monitor, in consultation with the Parties, is required to include detailed information regarding bias-free policing in all public reports. The collection and analysis of data to allow reporting on bias-free policing is to be part of an Evaluation Protocol developed with the advice of expert consultants.

#### **A. Data Collection and Analysis [CA ¶¶38-41, 51, 53]**

##### **1. Requirements**

As part of the Evaluation Protocol, the CPD is required to compile the following data to be analyzed, by percentage attributable to each of the City's fifty-two neighborhoods:

- Arrests
- Reported crimes and drug complaints
- Citations of vehicles and pedestrians
- Stops of vehicles and pedestrians without arrest or issuance of citation
- Use of force
- Citizen reports of positive interaction with members of the CPD by assignments, location, and nature of circumstance
- Reports by members of the CPD of unfavorable conduct by citizens in encounters with the police
- Injuries to officers during police interventions
- Injuries to citizens during arrests and while in police custody

- Citizen complaints against members of the CPD

Paragraph 40 requires that the City provide to the Monitor incident-based data so that the nature, circumstances and results of the events can be examined.

Paragraph 51 references Ordinance 88-2001, which identifies required data to be reported and analyzed to measure whether there is any racial disparity present in motor vehicle stops by CPD. The local ordinance requires the following information be gathered:

- The number of vehicle occupants
- Characteristics of race, color, ethnicity, gender and age of such persons (based on the officer's perception)
- Nature of the stop
- Location of the stop
- If an arrest was made and crime charged
- Search, consent to search, probable cause for the search; if property was searched, the duration of search
- Contraband and type found and
- Any additional information

Paragraph 53 of the Collaborative Agreement requires the Monitor, in consultation with the Parties, to include in all public reports, detailed information of the following:

- Racial composition of those persons stopped (whether in a motor vehicle or not), detained, searched, arrested, or involved in a use of force with a member of the CPD
- Racial composition of the officers stopping these persons

## **2. Status**

### **a. Traffic Stop Data**

CPD officers continue to collect traffic stop data on Contact Cards. The CPD reports that it has prioritized the entry of data from the Contact Cards submitted in 2003. Once RAND begins work, the 2003 data will be available for analysis.

### **b. Pedestrian Stop Data**

The CPD has revised its Investigatory Stops Policy, Procedure 12.554, to require a contact card be filled out for (1) all vehicle stops, and

for (2) any vehicle passenger detention that meets the definition of a Terry stop.<sup>9</sup> For consensual citizen contacts, the policy states that an officer **may** complete a contact card, if the officer believes the card will provide intelligence information and the information is provided voluntarily. However, the procedure is silent on whether officers are required to complete contact cards for Terry stops stemming from pedestrian encounters. Current practice leaves this up to the discretion of the officer.

The City states in the June 2004 CA Status Report that it will be submitting correspondence to the Monitor regarding pedestrian stop data collection. The City made this same statement in the March 2004 Status Report, however.

#### **c. Use of Force Racial Data**

The CPD has not provided use of force data, broken down by race, for the 1<sup>st</sup> quarter of 2004.

#### **d. Data on Positive Police-Citizen Interactions**

The Parties have agreed to a Report of Favorable Police Conduct form, which has been printed and disseminated. As reported in the CPD's May 2004 MOA Status Report, 50 reports were processed by CPD during the first quarter of 2004.

#### **e. Data on Unfavorable Citizen Interactions**

The Parties have as yet been unable to agree on a final version of a form for reporting unfavorable citizen interactions. The FOP has taken the lead responsibility on this matter.

### **3. Assessment**

#### **a. Traffic-Stop Data Collection**

The CPD is collecting traffic stop data on its contact cards, but the data is not being analyzed. The Parties are not yet in compliance with this requirement.

#### **b. Data Collection on Pedestrian Stops.**

The Parties are not in compliance with this requirement of the CA.

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<sup>9</sup> A Terry stop is one where the officer has reasonable suspicion to believe the person is committing or has committed a crime.

### **c. Use of Force Racial Data**

This data will be reported in the Monitor's Reports once RAND is under contract and able to assess and analyze the data.

### **d. Favorable Interactions**

The Parties are in compliance with this CA requirement.

### **d. Unfavorable Interactions**

The Parties are not in compliance with this CA requirement. Given the minimal amount of disagreement among the Parties and the time that has been taken to resolve this issue, we believe that any remaining disputes should be submitted to the Monitor for resolution.

## **B. Training and Dissemination of Information [CA ¶52]**

### **1. Requirement**

The Collaborative Agreement requires that all Parties cooperate in the ongoing training and dissemination of information regarding the Professional Traffic Stops/Bias-Free Policing Training Program.

### **2. Status**

The Parties report that CPD's Training Section is exploring the possibility of ongoing Professional Traffic Stop/Bias-Free Policing training. However, there appears to be no progress in this quarter in efforts to identify a suitable curriculum and vendor.

### **3. Assessment**

The Monitor has not seen evidence that the Parties are cooperating in ongoing bias-free policing training. Therefore, we cannot find compliance at this time.

## **C. Professional Conduct [CA ¶54]**

### **1. Requirement**

Paragraph 54 of the CA requires that when providing police services, officers conduct themselves in a professional, courteous manner, consistent with professional standards. Except in exigent circumstances, when a citizen is stopped or detained and then released as a part of an investigation, the officer must explain to the citizen in a

professional, courteous manner why he or she was stopped or detained. An officer must always display his/her badge on request and must never retaliate or express disapproval if a citizen seeks to record an officer's badge number. These provisions are to be incorporated into written CPD policies.

## **2. Status**

This provision has now been incorporated into procedures 12.205 and 12.554, and put into effect. The CPD's Manual of Rules and Regulations also generally mandates courteous, fair treatment of all.

## **3. Assessment**

Based on the information we have to date, the City is in compliance with this provision. Additional information will be available when the Evaluation Protocol gets underway.

# **V. Citizen Complaint Authority**

## **A. Establishment of CCA and CCA Board [CA ¶55-64]**

### **1. Requirements**

- City will establish the Citizen Complaint Authority
- The CCA will replace the CPRP and investigative functions of the OMI. The CCA will investigate serious interventions by police including shots fired, deaths in custody, major uses of force; and will review and resolve citizen complaints
- The CCA Board will consist of seven citizens; the CCA will be run by an Executive Director and have a minimum of five professional investigators; the Board must be diverse
- Board and Executive Director to develop standards for board members, and training program, including Academy session and ride-along
- Board and Executive Director will develop procedures for the CCA
- CCA to examine complaint patterns

- CCA to develop a complaint brochure, as well as information plan to explain CCA workings to officers and public
- CCA to issue annual reports
- City Council to allocate sufficient funds for the CCA

## **2. Status**

The CCA has been operating and investigating complaints since January 6, 2003. A CCA board of seven members is in place, having undergone a training program before beginning work and reviewing complaints. The CCA has also established procedures for its board meetings, appeal hearings, and its investigations. The CCA Board has chosen Board member Richard Siegel as the new chairperson of the CCA.

## **3. Assessment**

The City is in compliance with the provisions relating to establishing the CCA and CCA board.

### **B. Executive Director and Staff [CA ¶¶ 65-67]**

#### **1. Status**

##### **a. Executive Director**

As noted in Chapter Two, Mr. Wendell France was selected to be the new Executive Director of CCA and started in April 2004. We look forward to working with Mr. France.

##### **b. Investigator Position**

The CCA hired a fifth investigator who started work in the First Quarter of 2004. The City now has the minimum number of investigators required by the Agreements.

#### **2. Assessment**

The Parties are now in compliance with these provisions of the CA.

### **C. CCA Investigations and Findings [CA ¶¶ 68-89]**

Our review of CCA investigations is discussed in Chapter Two, Section IV.D.

In addition to the review of individual complaints, paragraph 83 of the CA calls on the CCA to examine complaint patterns that might provide opportunities for the CPD and the community to reduce complaints. Following the identification of such patterns, the CCA and the CPD are to jointly undertake a problem solving project to address the issues raised. To date, most of the CCA's activities have been limited to complaint investigation and review. The CCA board has made some policy recommendations to the CPD, based on its review of complaints. Now that the CCA has a full-time executive director and a more complete complement of investigators, we expect that the CCA can devote greater attention to the analysis of complaint patterns and trends.

Also, paragraph 80 requires the CCA and CPD to develop a shared database to track all citizen complaints, the manner in which they are handled and their disposition. Currently, the CCA does not have access to a shared database, and the City is not in compliance with this provision. However, the City has stated that CCA will have access to the ETS system.

Finally, the CA requires that the CCA issue public, annual reports summarizing its activities in the previous year. The CCA is currently preparing the annual report summarizing its activities for 2003.

## **CHAPTER FOUR. INVESTIGATIONS**

### **I. Use of Force**

#### **A. Canine**

1. Tracking Number: 2004-0472  
Date and Time: July 5, 2003 0213 hours

Summary: Officers were searching for a subject who had attempted to rape a 12-year-old girl. The girl managed to free herself and get away. The subject was last seen running into a wooded area. Officers responded and established a perimeter. A canine handler and his dog responded and established a track. This was done with the assistance of another canine handler who had also responded to assist. (It should be noted, however, that only one dog was used in establishing the track and performing the subsequent search.)

A supervisor on the scene conducted an assessment and authorized use of the canine. The handler prior to deployment gave a loud and clear warning. The canine was deployed on a 30 foot lead, but was only 10 feet out from the handler. The area to be searched was thick with brush and very dense. The handler used intermittent light from his flashlight to light his path. About ten minutes into the search, the handler heard the subject yell out. He illuminated forward and found the canine standing over the subject, but not biting him. The subject was attempting to conceal himself with a box spring and underbrush. The dog was immediately recalled and complied. The subject was arrested. In a later interview, he advised that the dog had, in fact, bitten his upper leg. The wounds were minor. The subject was treated and released at University Hospital.

CPD Review: Review was conducted by the Special Services Commander and consisted of a review of required reporting and taped interviews of the involved parties. Command found that the use of the canine was appropriate under these circumstances, that a warning of deployment was properly given (noting that the subject was found about 40 feet from where the warning was given), and that the actual engagement was so brief that the officers never witnessed it, in that it took place in the time that the subject yelled and the officer turned on his light. The dog was quickly recalled and responded without incident. Command found the incident to be consistent with Department policy and state law.

Monitor's Assessment: Based on the facts and circumstances of this case, the deployment of the canine was consistent with the terms of the Agreement. The handler stayed within ten feet of the canine, and given the efforts of the suspect to conceal himself, the heavy brush, and the fact that it was nighttime, it was not clear that the suspect could have been apprehended using less forceful means.

The subject indicates in his statement that he failed to hear the canine announcement. However, he was discovered only 40 feet from where the announcement was given, so his statement that he did not hear the announcement can be questioned. It is unclear why the subject was not discovered sooner than 10 minutes if he was so close to where the initial deployment took place. It is possible that he concealed himself so effectively that it took longer for the dog to locate his scent, and thus locate the subject. The photographs, although taken the next morning, make clear how thick the brush was in this area, and demonstrate why it may have been more difficult to locate the subject as he attempted to conceal himself.

2. Tracking Number: 2003-0473  
Date and Time: July 5, 2003 1703 hours

Summary: A patrol lieutenant attempted to stop a car after the driver had engaged in a drug transaction with a known drug dealer. The driver failed to stop when the officer activated his lights and siren, and accelerated and ran a red light, resulting in a motor vehicle accident. The subject attempted to climb through the window of his moving car, fell under the car in the process, and the vehicle rolled over his ankle. He got up and ran from the scene. The lieutenant gave chase and saw the subject reaching into and pulling at his pockets as if to retrieve a possible firearm.

The subject ran into a lot that was covered with thick weeds and surrounded by a fence. A perimeter was established and a Canine Unit was requested. A Sheriff's helicopter also responded, but could not see the subject due to the thick brush. The lieutenant authorized deployment of the canine believing that the subject was armed and had taken up a position in the weeds.

Before beginning the canine search, a patrol officer had given a canine warning. The canine handler, however, directed that no additional warnings be given because the subject was believed to be armed and a warning could compromise a tactical advantage. The canine was deployed on a thirty-foot lead. Briefly into the search, the canine engaged the subject. The canine was approximately 25 feet from

the handler when this took place. The handler did not see the engagement.

The subject was taken into custody without further incident. He received a small puncture wound and scratch to the left thigh.

CPD Review: Review was conducted by the Special Services Commander and consisted of a review of the required reporting and taped statements from the involved parties. Command found the tactics and deployment to be consistent with Department policy and state law. The Special Services Commander did note that it would have been better had the preliminary investigation of the lieutenant's actions not been conducted by a sergeant. This would have been better accomplished by contacting a lieutenant from another patrol district or a captain to conduct the preliminary review. The CPD General Order does not mandate this process, however.

Monitor's Assessment: The Monitor concurs with Command's opinion that the preliminary review of the lieutenant's tactics and deployment decision should have been conducted by a person of equal or greater rank to ensure objectivity and eliminate the possibility of any potential conflicts. There is no evidence, however, that the investigation conducted by the sergeant was anything less than thorough and proper.

The subject was believed to be armed and had concealed himself in thick brush. Deployment of the canine provided the greatest tactical advantage to the officers on the scene. Although the patrol officer gave an initial warning, the Monitor concurs with the handler's decision not to initiate any subsequent warning. Because the subject was believed to be armed, the canine bite was consistent with the MOA canine provisions. Once it was determined that the subject was not armed, the canine was recalled, and complied immediately.

## **B. Use of Taser**

1. Tracking Number: 2004-0062  
Date and time: February 2, 2004 1350 hrs.

Summary: Officers were attempting to stop a subject who fit the description of a wanted felon. The subject refused the officer's commands to stop walking and to remove his hands from his pockets. Each of the officers grabbed one of the subject's arms and again demanded that he remove his hands from his pockets or be hit by the Taser. The subject refused and the Taser was deployed once from approximately 2 feet away, striking the subject in the thigh. The subject

was immobilized and fell to the ground where he was handcuffed. Crack cocaine was recovered from his pocket. A misdemeanor capias was also on file for the subject. It does not appear that this individual was, in fact, the wanted subject that the officers initially sought.

CPD Review: Command review consisted of taped statements from the officers and the subject and a review of the required reporting. Both the investigating sergeant and reviewing lieutenant found the deployment to be consistent with policy and state law.

Monitor's Assessment: Based on the reporting, the deployment appears consistent with the requirements of the MOA and CA. It is unclear from the reporting, however, as to whether any other arrest control techniques were used prior to the Taser deployment. Further, it is unclear as to whether the officer perceived that the subject might have been in possession of a weapon, thus the reason that his hands were in his pockets. If so, closing on the subject may not have been the most prudent decision. Nonetheless, this does not make the use of the Taser inappropriate. The concern, however, would be if the subject had his hand on the weapon at the time the Taser was deployed, an accidental discharge could result. This is a training issue that CPD may want to consider. Additionally, the audio portion of the taped statements provided to the Monitor was poor, particularly the subject's responses. The subject admits, however, having purchased drugs prior to being contacted by the officers. He further acknowledges that he was warned of impending force more than once prior to deployment of the Taser. Last, he acknowledges his failure to adhere to the officer's commands.

2. Tracking Number: 2004-0063  
Date and Time: February 7, 2004 1252 hours

Summary: Subject fled from a vehicle after a drug interdiction-related traffic stop. When the officers caught up with the subject, he refused to stop and to get on the ground after numerous commands. A warning of impending force was given and the Taser was deployed from approximately 10 feet, striking the subject in the lower back. The subject complied without further incident.

CPD Review: District Three's Command review highlighted four areas: review of the decision to engage the subject in a foot pursuit, confirmation of the subject's obstructive actions, clarification of the subject's admission, and the absence of an MVR tape.

- Command found the foot pursuit to be within Department guidelines and reminded the investigating sergeant, through counseling, of the

importance of including this analysis in the supervisory investigative reporting of the incident.

- The initial taped statement of one of the officers failed to clarify his observations as to the subject's obstructive actions. This was clarified in a subsequent interview and supports the fact that the subject was resistant to the officer's demands for compliance.
- The investigating supervisor's interview of the subject supports the officer's contention that he was non-compliant and moving away from the officer when the Taser was deployed.
- Last, the MVR was not activated because the subject abruptly pulled into a parking space and fled from his vehicle before the officers had the opportunity to activate their emergency equipment.

The investigating supervisor and Command found the deployment to be consistent with policy.

Monitor's Assessment: The Monitor concurs with Command's findings.

3.     Tracking Number:         2004-0065  
       Date and Time:         February 11, 2004 1509 hours

Summary: Officers responded to an MHRT call of an aggressive and violent individual, previously diagnosed as a paranoid schizophrenic, who was being combative towards staff and other residents at the location where she was being cared for. Officers were requested by the staff in order to have the woman transported to University Hospital for a psychiatric evaluation. They provided the officers with a signed hold form, per doctor's instruction. The officers contacted the subject and requested her cooperation. They repeatedly instructed her to place her hands behind her back so that she could be handcuffed and transported. She refused and was belligerent, even after being advised that the Taser would be used if she did not cooperate. A balance displacement move was first used to bring her to the ground and then one officer administered a "drive stun" of the Taser to her foot to incapacitate her. She was handcuffed without further incident at that time. The Cincinnati Fire Department was requested to respond to the scene to evaluate her condition, but she refused medical attention. At that time she was transported to University Hospital for evaluation by Psychiatric Emergency Services.

CPD Review: The supervisor's evaluation and Command staff review determined that the use of the Taser was consistent with Department training and policy. An independent witness (facility staff) corroborated the officers' version of the incident, their repeated attempts to gain voluntary compliance by the subject, and the warnings they gave her that the Taser would be used if she did not cooperate. The Command review determined that the Taser was deployed in a manner consistent with policy and training.

Monitor's Assessment: The subject's statements during the taped interview were faint and difficult to hear. Command noted this in their review and had the statement transcribed to assist in the investigation and review. All required documentation was submitted and complete.

The Monitor concurs with Command's assessment and findings in this matter. The use of the Taser was consistent with policy and training.

4. Tracking Number: 2004-0082  
Date and Time: February 6, 2004 1430 hours

Summary: Subject was being transported to University Hospital for psychological evaluation. Upon arrival and after exiting the car, the subject lay down on the ground and refused to get up and go into the hospital. The female officer transporting the subject gave him several commands to get up or be hit with the Taser. The subject was struck once with the Taser barbs in the back from a distance of approximately 5 feet to no avail. The officer deployed the Taser again, striking the subject in the elbow area. The subject stopped his behavior and went into the hospital without further incident.

CPD Review: Command found the officer's actions to be consistent with Department policy.

Monitor's Assessment: There is no separate Command analysis other than the Form 18TBFP Report and the Arrest and Investigation Report. The audiotape provided to the Monitor was of poor audio quality and was not useful in this review.

It is unclear whether this subject was restrained at the time of the transport. The reports indicate that the subject "exited the police vehicle and laid down on the ground." This gives the impression that the subject let himself out of the vehicle and lay down on the ground, and therefore was not restrained. Also, in a situation like this, officers might consider various control techniques to achieve compliance before resorting to use of force. In this case, use of the Taser might have been a reasonable and

prudent option if the officer was by herself, the subject had a history of mental illness, and was physically larger than the officer. There was no discussion of these factors in the officer's or Command's reports, however. Articulation of these types of circumstances is necessary to evaluate whether the use of the Taser in this case was a reasonable force option.

5. Tracking Number: 2004-0084  
Date and Time: February 8, 2004 0042 hours

Summary: Officers responded to a call of a disorderly individual who was heavily intoxicated and out of control. The reporting party was the subject's mother. When the officers arrived, they approached the subject in the basement of the residence and instructed him to comply with their instructions so that he could be taken into custody. The subject kept reaching into his pockets even after being instructed not to do so. After he kept refusing to comply with the commands, the Taser was used. He still did not follow the instructions after the first application of the Taser, so a second 5-second charge was applied.

During the interview, the subject acknowledged he did not cooperate with the officers and failed to follow their instructions. He was apologetic and stated that he was responsible for what occurred and the officers did not do anything wrong.

CPD Review: Command staff determined that the use of the Taser in this case was consistent with policy, training and state law. No issues of concern were identified.

Monitor's Assessment: Interviews were conducted with both officers involved and the subject. The statements were consistent and bear out Command's finding that the use of the Taser was appropriate and consistent with CPD policy.

There was no mention in the investigative reports whether the reporting party (the mother) was present and if she witnessed the Taser deployment. Because the subject acknowledged and accepted responsibility for the incident and agreed the officers were correct in their actions, the failure to identify and obtain a statement from a possible witness does not affect the determinations in this matter. However, all witnesses should be routinely identified and interviewed in these investigations.

6. Tracking Number: 2004-0085  
Date and Time: February 16, 2004 0157 hours

Summary: Officers were responding to a call for service for a woman being assaulted, when they encountered a male subject who was believed to be the combatant and arguing with the woman. The subject kept walking away from the officers and refused to take his hand from his pockets. After several warnings and no compliance, the Taser was deployed from a distance of 10 feet. The first deployment failed to result in compliance (barbs struck his leather coat) and another cycle was administered. The subject allowed himself to be handcuffed without further incident.

CPD Review: Command found the actions to be consistent with policy.

Monitor's Assessment: The Monitor concurs with Command's assessment.

7. Tracking Number: 2004-0087  
Date and Time: February 12, 2004 1200 hours

Summary: Officers observed a subject known to them who had two outstanding warrants, one for a felony vandalism charge. They approached the individual and told him to stop, but he fled. A foot pursuit ensued, with the subject throwing garbage cans into the path of the officers, running into traffic and continuing his efforts to evade the officers. He was told several times to stop and that if he did not, a Taser would be used. When the officers were close enough to deploy the Taser, they did so, and the subject was subdued after he was subjected to one application of the Taser.

CPD Review: The Command review included interviews with the officers involved, an independent witness who was located in the area, an attempt to interview the subject, and a determination whether the police vehicle used was equipped with a MVR. All reporting requirements of the policy were addressed in the investigation. Command's finding was that the initial contact and subsequent actions were consistent with policy, procedures and law.

Monitor's Assessment: The administrative investigation was thorough and complete. Although the subject refused to be interviewed, an effort was made to obtain all possible evidence and documentation, including the statement of an independent witness in the vicinity. The Monitor concurs with Command's findings.

8. Tracking Number: 2004-0091  
Date and Time: February 18, 2004 1459 hours

Summary: A sergeant attempted to stop a vehicle for expired plates and improper lane change. The vehicle failed to stop and a pursuit was initiated. During the course of the pursuit, the subject threw four bags of pre-packaged marijuana from the vehicle. The subject then stopped the car, exited, and fled on foot. The sergeant gave the subject numerous commands to stop or be hit with the Taser. The subject refused to comply and was struck with the Taser in the ankle from a distance of approximately 10 feet. The subject fell to the ground and was arrested without incident.

CPD Review: Command found the incident consistent with policy. However, in reviewing the MVR, Command noted that the sergeant violated policy by not stopping at numerous red lights. The sergeant was counseled.

Monitor's Assessment: The questions posed by the investigating supervisor of the subject and the officers were clear, organized and relevant to the investigation. Further, the answers provided a clear understanding of the suspect's actions that led to the deployment of the Taser. The only question not answered was who removed the barbs from the subject after his arrest. Although not material to determining compliance, this particular point remained unresolved. Notwithstanding, the Monitor concurs with Command's review and findings.

9. Tracking Number: 2004-0092  
Date and Time: February 24, 2004 1446 hours

Summary: Arresting officers, who were not in uniform, observed a subject with marijuana in his hand. They identified themselves as police officers, ordered the subject to give them the marijuana and he complied. One officer began a pat-down search of the subject when the subject suddenly pushed away, turned and assumed a fighting stance. The second officer advised the first officer to disengage from the subject, displayed his Taser (placing the laser light on the subject's chest) and ordered the subject to get on the ground. The subject was ordered to turn around and put his hands behind his back. Instead, the subject turned and appeared to be about to flee. The Taser was deployed, striking the subject on the right side of his back, and one 5-second cycle from the Taser was discharged. The subject fell to the ground and was subsequently taken into custody without further incident.

CPD Review: Command review found the initial contact with the subject and the use of the Taser to be consistent with Department training and policy.

Monitor's Assessment: The arrest report, taped interviews and use of force investigation documents were reviewed. The description of the incident in the officers' reports and taped interviews were consistent. The subject's taped interview was not consistent with the report; however, his rendition of the event was also inconsistent and changed in the course of the inquiry. The use of the Taser in this case appears to be consistent with policy and training.

10. Tracking Number: 2004-0105  
Date and Time: February 11, 2004 0314 hours

Summary: Officers were conducting a drug investigation when the subject exited his vehicle, tossed a baggie containing a white powder, and fled on foot from the scene. Officers gave foot pursuit. One of the officers ordered the subject to stop, to no avail. He deployed his Taser striking the subject with one barb in the calf and the other in the pant leg, thus breaking the current. The subject again tried to flee and the officer deployed the Taser again from approximately 10 feet. The subject complied and was arrested without further incident.

CPD Review: The investigating supervisor and Command properly evaluated the decision to engage in a foot pursuit, finding it to be within Department policy and prudent under the circumstances. Command interviewed all parties involved. During the arrestee's interview, he states that he was already on the ground, thus complying with the officer's direction, when he was struck by the Taser. The second involved officer stated in her interview that she heard her partner give the subject commands to stop, and she confirms hearing the second Taser deployment.

It was determined that the use of the Taser was consistent with Department policy, and the subject's allegation that he was struck with the Taser while on the ground was determined to be unfounded, based on the witness officer's statement.

Monitor's Assessment: Although the officer indicates in his statement that he gave a warning of impending force, no such warning is indicated on the Taser Report itself. This has been a common inconsistency in past Use of Force Reports, and the reporting should be consistent with the officer's statement.

While the second officer indicates hearing her partner give the subject commands, and further hears the second Taser deployment, it is not clear that she actually saw the deployment, particularly the second deployment. This uncertainty, absent other evidence supporting the officer's statement, should render subject's complaint "not sustained" as opposed to "unfounded."

11. Tracking Number: 2004-0108  
Date and Time: February 27, 2004 0330 hours

Summary: Officers responded to a location where a report of criminal damage to a vehicle was in progress. Upon their arrival they observed three subjects around the vehicle. The subjects saw the officers and immediately fled on foot. The officers pursued them and chased one of the subjects into a park where he was ordered to stop several times by a pursuing officer. When he refused to comply the officer deployed his Taser. The suspect fell to the ground and offered no further resistance. He was taken into custody without further incident.

CPD Review: The Command review determined that the deployment of the Taser in this situation conformed to CPD policy, procedures and state law. No issues or concerns were identified in the staff review regarding the documentation provided or the quality of the investigation.

Monitor's Assessment: The documentation provided on this case was not sufficient to allow for a complete review of the facts. The face sheet of the "Use of Taser" form was not completely filled out and the audio recordings of the interviews were unintelligible. These were recorded at a high speed and playback at slower speeds did not achieve sufficient clarity to ascertain what was on the tape.

12. Tracking Number: 2004-0117  
Date and Time: February 25, 2004 1505 hours

Summary: Officers had information that subject had marijuana in his possession. Officers stopped the subject and asked for his identification, which they received after he was told why he was being stopped. One of the officers began to pat the subject down and he immediately fled from them. Officers began to pursue him and commanding him to stop, warning that they would deploy the Taser. An officer deployed his Taser and fired one cartridge into his back, with two cycles, without effect. The subject continued to flee from the officers until he fell against a parked vehicle. Officers then grabbed him and ordered him to place his hands behind his back, which he refused. The officer then attempted a drive stun twice to the subject's leg, which had

no effect. The officer then fired a second cartridge into the subject's leg, which allowed him to be handcuffed and placed under arrest.

CPD Review: The CPD Command reviewed and determined that all policies and procedures were complied with in the use of the Taser. Proper interviews and statements were taken from all involved persons. Command's review was thorough and complete. The subject stated that he did not feel the first Taser deployment (apparently because of his thick jacket), and that he did not feel the drive stuns, only the last Taser deployment.

Monitor's Assessment: The use of the Taser appears in policy and consistent with the Agreements. The officer used the Taser to arrest the subject and was able to do so without any injuries to the subject or the officers. While the Use of Taser Report fails to document a warning of pending force, the statements of both officers indicate a verbal warning was given prior to each use. The subject's statement indicated that he heard some yelling from the officer, but he didn't understand what the officer was saying.

13. Tracking Number: 2004-0120  
Date and Time: February 26, 2004 0005 hours

Summary: Officers were attempting to make a traffic stop when two subjects jumped out of the vehicle and fled from the scene. Officers gave chase and apprehended both subjects after a short pursuit. Other officers responded to secure the vehicle and noticed that the driver was still inside of the car lying down. Officers ordered him out of the car and he refused. Officers were finally able to get him out of the vehicle and attempted to place him under arrest. While trying to handcuff the subject, he pulled away from the officers and fled on foot. Officers gave chase and in an attempt to stop the subject fired their Taser at him twice without making contact. As the subject was attempting to climb over a fence one of the officers grabbed his leg and used the drive stun technique four times on the subject's leg. The subject was able to get over the fence and escape.

CPD Review: Command determined that the officer's initial Taser deployment was consistent with CPD policies. However, the officer using the drive stun was counseled because he used the drive stun while the subject was in an elevated position. This is contrary to Department policy.

Monitor's Assessment: The Monitor concurs with the CPD analysis.

14. Tracking Number: 2004-0123  
Date and Time: January 21, 2004 1402 hours

Summary: Officers conducted a car stop on the subject for a drug investigation based on information from undercover officers. The subject exited the car and fled. Officers began a foot pursuit, and two additional officers joined after hearing the broadcast of the foot pursuit. One of the officers reached the subject and tackled him. As he did so, the subject dropped a .25 caliber pistol that he was holding. A second officer reached for the gun and secured it, while a third officer assisted in trying to place the subject in handcuffs. The subject continued to resist, and according to the officers, tried to reach for the weapon. A sergeant on the scene displayed his Taser and warned the subject, and then deployed the Taser in a drive stun against the subject's stomach. The sergeant deployed the Taser a second time, and the subject complied with commands to place his hands behind his back. The subject acknowledges running from the police and possessing the gun. He alleged, however, that the officers choked him after he was tackled.

CPD Review: A supervisor responded to the scene and interviewed the subject and the officers involved. Because of the subject's allegation of being choked, a citizen complaint form was completed. There were no visible injuries or other evidence indicating the subject had been choked, and the officers each denied choking or seeing any other officer choke the subject. CPD determined that the initial contact, the foot pursuit and the use of the Taser were within policy. The investigating sergeant also recommended that the complaint be closed as unfounded. IIS reviewed the reports, tapes and photographs and closed the complaint as "not sustained."

Monitor's Assessment: The initial stop, pursuit and Taser use appear to be consistent with MOA and CA requirements. The complaint investigation and disposition also appear consistent with the Agreements. We do note, however, that Use of Taser Report does not have any place to record the takedown, other than in the narrative, so that the force involving the takedown was not separately reviewed and evaluated. It also will not appear in the CPD's use of force statistics.

15. Tracking Number: 2004-0134  
Date and Time: March 4, 2004 1655 hours

Summary: Subject was being stopped for a narcotics violation. Officers were in the area conducting buy-busts operations and had made a purchase from the subject. As officers approached the subject, he fled on foot from the officers. As the officers were pursuing the subject, one

of the officers ordered him to stop and warned that she had a Taser and would use it if he failed to stop. The subject refused to stop and continued to flee. With the subject refusing to surrender, one officer fired a Taser at the subject without making contact. Officers continued pursuing the subject and finally were able to surround him and he was then placed under arrest.

CPD Review: Command interviewed the subject who admitted that he was attempting to flee and resist arrest. Command found that the use of the Taser was consistent with CPD policy.

Monitor Review: The use of the Taser appears consistent with MOA and CA requirements. We note, however, that the officer acknowledges she was 15-20 feet away from the subject and too far for the Taser to be deployed effectively. Twenty feet is the outer range for the Taser, especially as the subject was running away from the officer.

16. Tracking Number	2004-0137
Date and Time	March 5, 2004 2334 hours

Summary: Subject was the target of a “buy/bust” operation with a CPD confidential informant. When a police officer approached him, the subject began running from the officer. The foot pursuit went through a wooded area. Two other officers stayed in their car, and spotted the subject when he came out of the woods. They exited the car, ordered the subject to stop and warned that the Taser would be used. The subject ran towards an apartment complex with the officers in pursuit. The subject ran into the courtyard of the complex and into a doorway when one of the officers again warned that he was going to deploy his Taser. The officer deployed the Taser from a distance of 5 feet and the barbs struck the subject in the arm. The subject fell to the ground and was taken into custody without further incident.

CPD Review: The investigating supervisor responded to the scene and interviewed the officers involved in the final foot pursuit. The subject refused, on tape, to be interviewed. The supervisor did not interview the officer who initiated the foot pursuit, as this officer did not witness the Taser deployment. CPD determined that the initial contact, foot pursuit and Taser deployment were within policy.

Monitor’s Assessment: The initial contact, foot pursuit and Taser deployment appear to be consistent with the Agreements. For completeness, the investigating supervisor also should have interviewed the third officer, to confirm the facts regarding the initial contact and foot pursuit, and confirm that he did not witness the Taser deployment.

17. Tracking Number: 2004-0140  
Date and Time: March 8, 2004 1139 hours

Summary: Officers responded to a domestic violence call for service and determined that the subject had already left the scene upon their arrival. The officers determined that the subject had an outstanding warrant for domestic violence and a probation violation. Officers left the area and began a canvass for the subject in the immediate area. Within a couple of blocks, officers observed a person who they believed matched the "lookout" for the wanted person and asked the individual to stop. This subject refused and continued to walk away from the officers. The officers left their patrol vehicle and attempted to stop the subject. Instead the subject fled on foot with the officers giving chase. After a short foot chase, the officers caught the subject and attempted to place handcuffs on him. The subject refused to comply and the officers warned him that this failure would result in the use of a Taser to force compliance. The subject still refused, and he was given a short drive stun burst from the Taser.

The subject was then placed under arrest and charged with obstructing official business and resisting arrest. This subject was in fact not the wanted subject. The Fire Department responded and recommended that the subject be transported to the hospital due to increased heart rate.

CPD Review: Command found that the Taser use was consistent with Department policy. The review included all required forms and interviews with officers involved and the subject, who refused to be interviewed.

Monitor's Assessment: The use of the Taser appears consistent with the MOA and CA requirements. However, there is a question concerning the basis for the initial contact that Command failed to review. The lookout for the subject in the computer aided dispatch (CAD) printout is different from the lookout in the officer's statement. According to the CAD printout, the lookout was for a male black, wearing a GRK jacket (sic), black pants, black boots, last seen on foot. (Note: The Monitor did not have a copy of the radio run to verify the lookout broadcast by the officers, to determine if it was different from the printout.) The subject arrested was wearing a black jacket and blue jeans. If the lookout in CAD is accurate, then the basis for the initial contact is in question.

Given that the person stopped was not the person police were looking for, the investigating supervisor and Command should have examined more closely the basis for the stop. Instead, there was no

analysis of the initial contact, beyond the supervisor's conclusion that the contact was in policy. While the Taser use appears to be within CPD guidelines, the incident with this specific subject might have been avoided if the officers had stopped the right person.

18. Tracking Number            2004-0145  
Date and Time:                March 5, 2004 1808 hours

Summary: Officers were dispatched to a shopping center for a disorderly persons run. The officers made contact with the subject and told her that they had received complaints from the restaurant's owner and that she had to leave the property. She did so. Shortly after, the officers were stopped by several drivers who told them a disorderly person was running into the path of oncoming traffic. The officer located the subject, and told her she was under arrest. The subject ran across four lanes of traffic to avoid the officers, and then tripped on the curb and fell. The officers attempted to handcuff the subject, but she resisted and would not put her arms behind her back. One of the officers warned her that he would use his Taser if she did not comply. She did not, and he used his Taser in a drive stun against her lower back. The Taser cycled for eight seconds and the officers were able to handcuff the subject. The subject stated in her statement that the officers shot her repeatedly in the back with the Taser; the Taser printout shows one deployment for eight seconds. The subject also complained that the officers put the handcuffs on so tightly that she was in great pain.

CPD Review: The investigating sergeant interviewed the officers and the subject. He determined that the initial contact and the use of the Taser were within CPD policy. Although he did not complete a complaint form, the sergeant states in a supplemental memo that he examined the subject's wrists and saw no sign of injury, and that he documented the lack of injury with photographs. The District Captain concurred that the Taser deployment was consistent with CPD policy. The District Captain does note that the sergeant's interviews, while covering the necessary information, were disorganized and appear unplanned. The sergeant was advised to follow the suggested questions for Taser investigations distributed during Taser training.

Monitor's Assessment: The Taser use appears to be consistent with the requirements of the Agreement. The District Captain's counseling of the sergeant on his interviews was also appropriate. The one concern we note is that the sergeant should have completed a citizens' complaint form based on the subject's complaint about her handcuffing. While a single comment about handcuffs being too tight might not trigger a complaint requirement, in this case, the subject

complained more than once and said that “she would like something done” about the officers for putting the handcuffs on so tight.

19. Tracking Number           2004-0155  
Date and Time               March 9, 2004 2302 hours

Summary: Officers conducted a traffic stop for a drug investigation at the request of the Street Corner Unit. The driver and one of the passengers fled from the car and an officer chased the passenger. When the subject went through and then locked a gate, the officer issued a warning of Taser use and then deployed her Taser, from approximately 20 feet away. The subject was too far away and the Taser missed, and the subject was not apprehended.

CPD Review: A supervisor responded to the scene, interviewed the officer deploying the Taser and a witness officer, and completed a Use of Taser Report. CPD concluded that the initial contact, the foot pursuit, and the Taser deployment were consistent with CPD policy.

Monitor’s Assessment: The Taser deployment appears to be consistent with the requirements of the Agreements. At 20 feet, the Taser was deployed at the outer limits of its range.

20. Tracking Number           2004-0158  
Date and Time:               March 12, 2004 0328 hours

Summary: An officer was attempting to arrest a subject for trespassing at the bus station. The subject became resistant and the officer requested assistance. Upon the arrival of back up units, the subject was commanded to cease his resistive behavior. He failed to do so and lunged at the officers. One of the back-up officers deployed the Taser from a distance of six feet. The barbs struck the subject’s leather jacket and were ineffective. Resistance continued and a drive stun was delivered to the subject’s lower back causing him to fall to his knees. He refused further commands to comply and refused to be handcuffed. A second drive stun was delivered to the left leg allowing officers to gain control of the subject’s arms and legs. The Taser was deployed again, but was intentionally interrupted as the subject was brought under control without further incident.

CPD Review: Command review of the incident consisted of a review of the force reporting, the Arrest and Investigation report, the CAD report, and the Taser Download data report. Command determined the use of the Taser to be consistent with Department policy and state law.

Monitor's Assessment: Although the arresting officer and responding back-up units might have considered using arrest control techniques prior to deploying the Taser, this option was not discussed in the reporting. Including such information would demonstrate that thought was given to the use of force continuum and other available options before deploying the Taser. While circumstances may have precluded other options, such circumstances should be articulated. Absent such information, a reviewing supervisor may not have sufficient information to reach the conclusion that the Taser was the most appropriate and effective tool in gaining compliance.

A review of the Use of Taser Report indicates that the Taser was deployed from an appropriate distance. The Taser Download printout confirms that the fourth cycle was intentionally interrupted by the operator one second after deployment, when the subject became compliant. While the Use of Taser Report indicates that a warning of impending force was given, the narrative is ambiguous, stating only that the subject "ignored repeated commands to cease his behavior."

If the purpose of photographing the subject is to document the presence or absence of injuries incident to the use of force, the areas where the subject was struck were not among the photographs provided to the Monitor. In addition, the narrative indicates that the subject was wearing a heavy leather coat that hindered the effectiveness of the initial deployment. In the two photographs provided, the handcuffed subject appears to be wearing a fleece over a hooded sweatshirt.

Notwithstanding these issues, and absent additional facts, the use appears to be consistent with the Agreements.

21. Tracking Number: 2004 0161  
Date and Time: March 20, 2004 0207 hours

Summary: Officer responded to a 911 hang-up call and domestic violence incident. Upon arrival, the initial officer was informed and verified that the subject was wanted on several outstanding arrest warrants. The officer ordered the subject to stay in the same room with him; however, the subject refused and cursed at the officer. As the subject continued to walk back to another room, the officer, fearing the subject might be retrieving a weapon, fired his Taser into the chest of the subject. The weapon had no effect on the subject. Additional officers arrived on the scene and ordered the subject to place his hands behind his back. When he refused to comply, a second officer fired his Taser at the subject and missed him with one of the barbs. The second officer then applied a drive stun directly to the subject's right shoulder and the subject dropped to his knees, but continued to refuse to cooperate with

the officers. After refusing to place his hands behind his back the officer applied a second drive stun to his shoulder and the subject complied.

CPD Review: The CPD obtained all of the required statements and interviews from the officers and witnesses. The subject refused to give a statement. Command found that both officers used their Tasers in compliance with all policies and procedures of the CPD. Verbal warnings were given by both officers.

Monitor's Assessment: The Monitor concurs with the finding of the CPD.

22. Tracking Number: 2004-0178  
Date and Time March 18, 2004 1924 hours

Summary: Officer observed subject in a drug transaction. As officer exited his unmarked car and identified himself as a police officer, the subject ran. The officer chased the subject and warned him that he would use his Taser if the subject did not stop. Subject did not stop and the officer deployed the Taser. The Taser barbs struck subject's shoulder and back, but because of his heavy clothing, he apparently did not feel the full effect of the Taser. He continued to run and then slipped and fell. The officer caught up and held subject down. He used a drive stun to subject's thigh and subject then gave up.

CPD Review: A supervisor responded to the scene, interviewed the officer and the subject (using the Taser questions from CPD), and completed a Use of Taser Report. He determined that the officer's initial contact, foot pursuit, and Taser use were consistent with policy. While a second officer was driving the car, he is not listed as a witness and he was not interviewed by the supervisor. The Use of Taser Report states that this officer did not witness the deployment.

Monitor's Assessment: The Monitor concurs with CPD conclusions.

### **C. Use of Chemical Irritant**

#### **i. Restrained Individuals**

1. Tracking Number: 2004-007  
Date and Time: January 10, 2004 0426 hours

Summary: Officers were attempting to place an arrested subject in the back of the police car when he became resistant. One of the officers deployed two, 3-second bursts of chemical irritant to the face

from a distance of four feet. The bursts were administered approximately 15 seconds apart. Subject became compliant and was transported without further incident.

CPD Review: Command review consisted of a review of the required reporting and interviews of all the parties. Command concluded that the officer's actions were consistent with Department policy and state law.

Monitor's Assessment: The narrative portion of the 18CI did not reflect a warning of impending force, however, the corresponding box was checked. The actions appear consistent with the Agreement.

2. Tracking Number: 2004-0096  
Date and Time: February 5, 2004 1716 hours

Summary: In response to a radio run regarding a wanted individual, officers located and placed an individual under arrest for two misdemeanor warrants. The subject was placed in the rear of a patrol vehicle and secured with the lap belt across his legs. He managed to extricate himself from the lap belt and proceeded to kick and break out one of the rear side windows of the vehicle. He was ordered to cease his behavior and move away from the window several times but continued his efforts to get through the open window. He was sprayed in the face with chemical irritant through the broken window by one of the officers. He temporarily settled down but again became belligerent. Further efforts were made to calm him down but he began spitting on the officers and attempted to get through the broken window once again. He was given another burst of chemical irritant. After he ceased his aggressive behavior, he was transferred to another patrol vehicle and transported without further incident.

There was also a complaint filed with IIS by this subject in regard to this incident. He alleges that he was in the patrol vehicle talking to the officers about his arrest when one of them suddenly maced him. He states he accidentally broke the window after he was maced.

CPD Review: Based on the statements of witness officers and a supervisor who were present during part of the incident, the complaint was closed as "not sustained" by IIS. The actions of the officers were deemed justified and consistent with Department policy and procedures, and state law.

Monitor's Assessment: The chemical irritant was deployed after the subject vandalized a police vehicle by kicking and breaking the window and damaging the door frame. He was warned repeatedly to

cease his actions, but continued in his efforts to get through the window. After he was initially subjected to the chemical irritant he settled down, but then became aggressive again. When he attempted to get through the window once again he was sprayed a second time.

The application of chemical irritant was appropriate and consistent with training and policy. The duration of the spray was also appropriate.

The sergeant who conducted this investigation pursued the complainant's allegations in an objective manner and asked probing questions of the witnesses and involved parties. However, there were some issues that were never clarified or adequately addressed regarding the circumstances surrounding the deployment of the chemical irritant. Also, it was never made clear whether the arrestee was handcuffed prior to being placed in the patrol vehicle and, if so, how he managed to extricate himself from the lap belt while the officers were present in the vehicle.

3.     Tracking Number:       2004-0101  
       Date and Time:       February 17, 2004 1548 hours

Summary: A patrol officer was dispatched to transport a prisoner on behalf of the vice unit. After being handcuffed and placed in the patrol vehicle, the prisoner became belligerent and kept attempting to slide out from under the restraining bar. She also started spitting at the officer. The officer told the prisoner several times to desist but she refused. She was advised she would be subjected to chemical irritant if she did not stop, but she continued her behavior. The officer applied chemical irritant to the subject's face for approximately four to five seconds, at which time she became compliant. She was transported to the Justice Center without further incident.

CPD Review: The Command review included interviews with witness officers, the involved patrol officer, the arrestee and a review of the required reports. The statements of the officer and witnesses were consistent, while the arrestee refused to provide any taped statement. The use of the chemical irritant was determined to be consistent with CPD policies and state law.

Monitor's Assessment: Chemical irritant was deployed only after the subject was warned that she would be subjected to it if she did not cooperate and cease spitting on the officer. The reports and recorded statements indicate proper procedures were followed and the duration of the spray and the target area were consistent with training and policy.

4. Tracking Number: 2004-0165  
Date and Time: March 20, 2004 2240 hours

Summary: Subject was arrested, handcuffed, and placed in the rear of a police vehicle when he suddenly began striking his head against the rear passenger side window of the patrol vehicle. The subject refused to stop after being ordered to do so, and an officer delivered a 3-second burst to the face from a distance of three feet. The subject continued and a second burst was deployed resulting in momentary compliance. Once officers got into the vehicle to initiate transport, the subject resumed striking his head and had to be sprayed a third time, after which he complied.

CPD Review: Command found the use of chemical irritant to be consistent with policy and state law.

Monitor's Assessment: While it appears from the facts that the irritant was deployed to prevent the subject from causing injury to himself, the narrative failed to articulate this fact. Further, the 18CI indicates a warning of impending force but again, the narrative is silent. Lastly, the 18CI indicates that the subject was not permitted to decontaminate. The narrative fails to address this issue. Absent this information, the Monitor cannot conclude compliance.

## **ii. Unrestrained Individuals**

1. Tracking Number: 2004-001  
Date and Time: January 2, 2004 2140 hours

Summary: Officers encountered a subject during a field stop relating to suspected drug activity. During the course of the stop, the subject quickly reached into his pocket and suddenly withdrew his hand revealing an identification card. He then reached back into his pocket, refusing commands to remove it. Because of his sudden and overt actions, and coupled with his refusal, one of the officers delivered a 3-second burst of chemical irritant to the face from one foot away.

During this brief time period, the other officer was able to discern that the subject was, in fact, reaching for a firearm. The officers called for assistance and attempted to gain control of the subject, who continued his aggressive movements. He managed to get the weapon from his pocket and fire one shot. The officers were able to gain control and he was arrested without incident. One of the officers received a minor hand injury during the struggle.

CPD Review: Command review consisted of a review of the Use of Force, Arrest and Investigation, and Supervisor's Investigation of Injury Reports, an MVR tape, and other required incident reporting. Based on this review, Command found the incident to be consistent with Department policy and state law.

Monitor's Assessment: The reports support the conclusions of Command that the chemical spray was consistent with policy. We note, however, that the 18CI report could have provided some explanation for why 75 minutes lapsed before decontamination took place. Under the circumstances (shot fired, minor injury to officer) it may be understandable why such a delay transpired. The Monitor concurs with Command's conclusions.

2. Tracking Number: 2004-010  
Date and Time: January 13, 2004 1533 hours

Summary: Officers were attempting to arrest a subject who became combative, refused to place his hands behind his back, and struck the wall in front of him. The subject turned quickly towards the officers and took up a fighting stance. One of the officers used an arm bar and took the subject to the ground in an effort to gain control. The other officer deployed a three second burst of irritant to the face, resulting in compliance. The subject was arrested without further incident.

CPD Review: Command review consisted of a review of the 18CI Report and the Arrest and Investigation Report. Command found the officer's actions to be consistent with Department policy and state law.

Monitor's Assessment: The 18CI report indicates a warning of impending force, although we have suggested that the warning should be noted in the narrative as well as in the check boxes. Notwithstanding, the use of chemical irritant in this circumstance appears consistent with the Agreements.

3. Tracking Number: 2004-0031  
Date and Time: February 2, 2004 1857 hours

Summary: Officer was in the process of arresting a subject for drug trafficking, when the subject began to pull away from the officer's grasp and attempted to run. The officer grabbed the subject around the upper torso from behind and was giving orders to comply and to place his hands behind his back. The subject continued to refuse and the officer deployed a 3-second burst of chemical irritant to the face from a distance of approximately three feet. The irritant was ineffective in

gaining compliance. With assistance from another officer, the arresting officer was able to gain control and apply handcuffs. The subject was taken into custody without further incident.

CPD Review: Command's review consisted of a review of the 18CI and the Arrest and Investigation Report. An examination of the officer's chemical irritant canister confirmed that it still worked, despite its ineffectiveness on this particular subject.

Monitor's Analysis: Neither the 18CI check list nor the narrative indicated that a warning of impending force was given. The facts and circumstances may have precluded such a warning, but the supervisor's narrative should have reflected those factors. Further, Command's review of these cases should be conscious as to whether or not this issue is properly raised and resolved before finding compliance. The Monitor believes that these facts present an appropriate use of chemical irritant to a non-compliant subject. However, the terms of the Agreement require that a warning be given if possible. We cannot ascertain from the facts, particularly with two officers present, whether or not a warning was impractical and would have placed the officers in greater danger. Without this information, the Monitor is unable to conclude compliance.

4. Tracking Number: 2004-0044  
Date and Time: February 3, 2004 2221 hours

Summary: Officer was investigating subject regarding a narcotics violation when the subject fled. A brief foot pursuit followed, during which time the subject threw contraband on the roof. The officer caught up with the subject and a struggle ensued. A 2-second burst of irritant was deployed to the face from a distance of two feet. The subject was taken into custody without further incident.

CPD Review: Command found both the foot pursuit and the use of irritant to be consistent with policy and state law.

Monitor's Assessment: Both the pursuit and the use of chemical irritant appear consistent with the Agreements. Although reference is made to orders given to the subject to comply with the officer's request to cease resistance, the narrative is not clear as to whether a warning of impending force was specifically given.

5. Tracking Number: 2004-0048  
Date and Time: January 1, 2004 1618 hours

Summary: Officers were attempting to arrest a subject for menacing and disorderly conduct when he became resistant. The

subject attempted to move his legs behind him in hopes of tripping one of the officers, when they used a weight displacement technique to take him to the ground. It was also at this time that one of the officers deployed a 2-second burst of chemical irritant to the subject's face from a distance of two feet. He was taken into custody without further incident. The subject's mother filed a complaint of excessive force that was subsequently investigated by IIS.

CPD Review: IIS reviewed all reporting and interviewed all involved officers, the subject, independent witnesses, and subject's parents. Two independent witnesses support the officer's account that the subject was being resistant. IIS initially found the complaint to be not sustained. The Chief of Police deemed the allegation to be "unfounded." The use of force was determined to be consistent with Department policy and state law.

Monitor's Assessment: We concur with the findings of the Chief of Police. The corroboration by independent and unbiased witnesses supports the conclusion that there was no basis to support the allegation of excessive force. The narrative, however, is unclear as to whether a warning of impending force was given to the subject prior to using the chemical irritant, although the corresponding box was checked. The incident appears consistent with Department policy and the Agreement. The audio-tape provided to the Monitor for review did not include any voice, so the taped statements could not be reviewed.

6. Tracking Number: 2004-0076  
Date and Time: February 16, 2004 1700 hours

Summary: Officers contacted a subject during the course of a narcotic investigation, during which time the subject attempted to flee. One of the officers grabbed hold, at which time the subject began flailing his arms and pulling away in an attempt to escape. The officer deployed a 3-second burst of irritant to the chest and face from a distance of three feet. The subject was taken to the ground and arrested without further incident. During the course of the struggle, the subject dropped a bag of suspected crack cocaine to the ground.

CPD Review: Command found the officer's actions to be consistent with Department policy and state law.

Monitor's Assessment: Again, the 18CI failed to address a warning of impending force. In this particular case, the rapidly evolving circumstances in which the officers found themselves may have precluded such a warning. Nonetheless, this issue should have been clearly articulated in the narrative, as we have stated in previous reports.

7. Tracking Number: 2004-0115  
Date and Time: March 2, 2004 0320 hours

Summary: Subject was under arrest for criminal damaging when he lunged at and began to kick the arresting officers. Attempts to control the subject were unsuccessful and an impending use of force warning was given to the subject to no avail. A 3-second burst of irritant was deployed to the face from a distance of two feet. The subject became compliant and was placed into the patrol car without further incident.

CPD Review: Command review consisted of a taped interview with the subject, with the assistance of a Spanish interpreter. The subject indicated that he was intoxicated at the time of the incident, and while he does not recall kicking the officers, he admitted his behavior might have been viewed as threatening to the officers. Command found the actions to be consistent with Department policy and state law.

Monitor's Assessment: The incident appears consistent with the Agreements.

8. Tracking Number: 2004-0127  
Date and Time: February 19, 2004 0220 hours

Summary: Officer was attempting to stop a subject from fighting with another. The subject refused after numerous demands and the officer deployed a 2-second burst to the face from a distance of five to seven feet. The subject was placed in custody without further incident. The subject was decontaminated within ten minutes of exposure.

CPD Review: Command found the use of chemical irritant to be consistent with policy and state law.

Monitor's Assessment: The reporting fails to articulate a warning of impending force. In addition, the reporting fails to demonstrate circumstances that would have precluded such a warning. Absent such facts, the Monitor cannot conclude that this incident is consistent with the Agreement.

9. Tracking Number: 2004-0168  
Date and Time: March 31, 2004 1836 hours

Summary: Officer observed a subject she believed to be wanted. She attempted to contact the subject when he fled into an apartment complex hallway. She pursued, contacted the subject, and ordered him to the ground. He refused, advanced towards the officer, at which time

she delivered a 3-second burst of irritant to the face and mouth from a distance of seven feet. The effect was immediate and he was taken into custody without further incident.

CPD Review: Command's review consisted of a review of the appropriate reporting. The officer's decision to engage in a foot pursuit was properly evaluated and deemed to be within policy. Command found the use of chemical irritant under these circumstances to be consistent with Departmental policy and state law.

Monitor's Assessment: The Monitor concurs with Command's conclusions. Furthermore, the suddenness of the subject's advance on the officer precluded a warning of impending force.

#### **D. Non-Compliant Suspect/Arrestee Reports**

During this quarter, the Monitor reviewed 37 Non-Compliant Suspect/Arrestee Reports. Of those reports reviewed, two failed to contain any narrative explanations that described the facts and circumstances that led to the use of force. The absence of such a narrative precludes the Monitor from finding compliance as to those particular incidents.

Nineteen of the remaining 35 had narratives that were included on the 18NC report. One of these narratives was exceptional in the manner in which it set out the facts and circumstances that led to the use of force, and included a comprehensive review by a supervisor. The remaining 18 had narratives that described the facts and circumstances of the use of force. Sixteen of the 35 reports did not have any narrative on the 18NC form, but did include Arrest and Investigation Reports or other supporting documents. Nine of the 16 included information sufficient to support compliance. Seven, however, were either illegible or lacked sufficient facts for the Monitor to find compliance.

A second requirement of the MOA and the modifications made for reporting "hard hands" and takedowns is that the supervisors review the 18NC Forms and provide written comments on the officer's tactics and whether the force was within policy. Only two of the 18NC forms included any written comments by the supervisor, and in one of those, the Monitor came to a different conclusion than the supervisor (see summary below). The remainder of the forms contained only the supervisor's signature. While a signature line may reflect some review of the form, it is not sufficient to comply with the requirement that supervisors evaluate the officer's tactics and provide written comments regarding whether and why the force was consistent with CPD policy or not.

1. Tracking Number: None  
Date and Time: March 23, 2004 0115 hours

Summary: Officers stopped a vehicle for equipment violations. An occupant of the vehicle, who was visibly intoxicated, got out of the passenger side of the car and refused commands to get back inside. After being targeted by one of the officer's Taser, the passenger started back towards the vehicle. The officer began giving commands for the subject to place his hands behind his back, quickly approached the subject, pushed him to the ground, and placed him in handcuffs. The subject was taken into custody without further incident. The incident was captured on the MVR.

CPD Review: The first line supervisor, while noting that the officer's use of a "hard-hands" take-down was not "best practices," determined that it was within Department policy, as the subject disregarded the officer's commands and the officer feared that the subject may have been returning to the vehicle to retrieve a weapon. The supervisor further stated that the officer could not stop his momentum as he approached the subject, and thus the subject was knocked to the ground.

The first line supervisor determined that the Taser would have been the preferable option under the circumstances, although he noted that use of the Taser in this incident would have had the same result as the balance displacement; that is, the subject being taken to the ground.

Monitor's Assessment: Although difficult to hear the verbal exchange, and absent the benefit of being there to sense what the officer may have been experiencing, it seems as though the intoxicated subject was attempting compliance. It also does not appear that the subject's movements were such that a reasonable officer would have perceived that his intention was to retrieve a weapon and thus place the officer in imminent threat of harm. It appears from the MVR tape that the officer rushed the subject and knocked him to the ground without warning. The evidence does not suggest that this level of force was necessary to take this subject into custody. That being the case, the officer's actions appear to be excessive.

## **II. Complaint Investigations**

### **A. IIS Investigation**

1. Tracking Number: 03-137  
Date and Time: May 14, 2003 1130 hours

Summary: Officers were working a confidential informant who was going to purchase crack cocaine from a known drug dealer. Moments after the purchase took place, the officers observed the dealer walking with a female subject. The officers pulled up to the two in an unmarked vehicle, exited, and ordered the subjects to stop. The dealer ran from the scene, while the female remained behind. The officers chased the dealer.

The female alleged that one of the officers grabbed her around the throat and threw her to the ground causing injuries to her elbow, shoulders, and hand. She further alleges that she brought this information to the attention of the other officer and that neither notified a supervisor. Thus, she was not provided with any immediate medical attention for her injuries. The officer stated that he ran past the female, but he did not recall pushing or grabbing her, or know whether she was knocked down.

The Internal Investigations Section investigated the incident, as did the CCA. During the course of the IIS investigation, it was determined that the officer using force had met with the confidential informant before the IIS interviews, and failed to document that encounter per Department directives. There was also an allegation of theft, referencing the fact that the marked "buy" money was taken from the complainant incident to her detention.

The complainant was not arrested or charged in this offense, as the investigating officers felt it unlikely that they would secure either an indictment or conviction.

IIS Investigation: IIS conducted an investigation into the allegations and interviewed the complainant and seven others, including the accused officers, Department members, the confidential informant, and civilian witnesses. Interviews with an independent witness and a friend of the complainant corroborate the complainant's assertions and substantiate the allegations set forth against the accused officers. Statements from both the accused officer and the confidential informant supported a sustained finding that the officer met with the informant, provided him with money, and failed to document the meeting per Department directives.

Monitor's Assessment: The investigation appears consistent with the Agreement.

In reviewing the accused officer's statement, he denies knowing whether he knocked the complainant to the ground. The following is a synopsis of questions asked and responses given that may have risen to the level of a false statement or misrepresentation of facts, neither of which were discussed in the IIS or CCA's investigation.

*Question: Did she fall to the ground?*

*Answer: I don't know*

*Question: You would know if you ran into her and knocked her to the ground, right?*

*Answer: Yeah*

*Question: You would know if you approached her and pushed her to the ground, right?*

*Answer: Yeah.*

*Question: And you didn't do that?*

*Answer: No*

*Question: Didn't run into her?*

*Answer: No*

*Question: She didn't fall to the ground in front of you?*

*Answer: No*

This exchange seems sufficient to raise the issue of false report or misrepresentation of facts on the part of the accused officer. Two independent accounts support the complainant's allegation that the officer grabbed her around the throat and threw her to the ground. The accused officer categorically denies having knowledge of the complainant falling to the ground, or making physical contact with her such that she was knocked to the ground. Unless CPD takes the position that his responses constitute mere denial, and that mere denial fails to rise to the level of a false report, this critical issue should have been addressed during the investigation.

2. Tracking Number: 03-194 and 03-195  
Date: July 22, 2003

Summary: Complainant alleges that he was in the parking lot of a One Stop Market with his brother-in-law. His brother-in-law tripped over a beer can, picked it up and threw it in a trash can. At that point,

an officer approached his brother-in-law from behind, wrapped his arm around his neck, and choked him. Complainant tried to intervene and told the officer to let go of his brother-in-law, when a second officer came up to him, grabbed him, and pushed him into a trash can and a wall. This officer then took off his badge, slapped him on the head and threatened to “kick his ass.”

The officers state that they saw the brother-in-law walking with an open beer can. The first officer exited his car and ordered the man to stop. The officer believed the person was going to flee, so he broadcast his location. The second officer was working a detail nearby and saw the person distance himself from the first officer. He states that he thought the man was going to run, so he approached the man from behind, grabbed the man’s left arm with his left arm, and placed the back of his right hand across the man’s face and on his left cheek. He did this to cause the man to be off balance to handcuff him, and he denies that he choked him. While this officer was handcuffing the brother-in-law, the complainant approached in a threatening manner. The first officer believed the complainant was interfering with the arrest, so he grabbed complainant’s arm to separate him from the other officer. The complainant stated “If you didn’t have that badge, I’d kick your ass.” The officer acknowledges he took off his badge and put it in his pants pocket, “to show that he wasn’t intimidated” and then handcuffed complainant. He denied striking or threatening the complainant. The brother-in-law was cited for an open alcohol container and released.

**IIS Review:** IIS interviewed the complainant and the involved officers. The investigator attempted to contact the brother-in-law, but was not able to interview him. IIS determined that the complaint alleging excessive force for choking the brother-in-law was not sustained. IIS also determined the excessive force complaint against the first officer relating to his detention of the complainant was not sustained. IIS did sustain a discourtesy violation against first officer for removing his badge, and sustained a procedure violation against the second officer for failing to properly tag the evidence (the beer can).

**Monitor’s Assessment:** The IIS investigator did a thorough job of interviewing the officers and complainant. She asked detailed questions about the basis for the initial stop, and a description of the events that led to the use of force by the second officer, as well as the circumstances surrounding the first officer’s taking off his badge. However, with respect to the use of force allegation, the IIS report does not reflect an analysis of this information. While there is a dispute over whether the officer’s actions constituted a “choke hold,” there is no dispute that the only rationale for the officer’s use of force was that he thought the brother-in-law was going to run. The second officer stated that he could not hear

any of the commands given by the first officer, that there was no physical threat posed by the brother-in-law, and that he did not give any verbal warnings or commands to the brother-in-law, or give him an opportunity to comply, before coming up behind him and using a balance displacement technique. IIS should have made a determination as to whether any use of force in this situation was appropriate, rather than simply not sustaining the allegation that a choke-hold was used.

3      Tracking Number:      03-246  
         Date:                      December 30, 2003

Summary: Complainant alleged that she was inside the Ritz Night Club when a fight broke out. She exited the building and saw Cincinnati Police detail officers in the parking lot. According to the complainant, when she complained to the officers about the fight and the fact that the officers should get involved, one of the officers told her "to shut the hell up." The complainant allegedly told the officer that she was a taxpayer and should not be the recipient of that type of abuse.

There were four officers on detail at the Ritz on this particular night. As a result of the incident occurring inside the club, a 3<sup>rd</sup> shift sergeant was dispatched to the club to provide support to the detail officers. According to the sergeant, upon his arrival, he observed the complainant being disorderly and it was his assessment that she was intoxicated. The sergeant states that on several occasions he asked the complainant to quiet down and requested her to move out of the parking lot. The officers were attempting to clear the parking lot. After asking the complainant and some of her companions to move, after four to six warnings the sergeant handcuffed the complainant and placed her under arrest. The complainant was arrested for disorderly conduct while intoxicated and criminal trespass, and transported downtown. The complainant alleged excessive force, stating that when the sergeant made the arrest, he bruised her right arm.

CPD Review: The IIS sergeant interviewed seven witnesses and reviewed the Cincinnati Police Communications Section dispatch tape. He concluded that the allegation of excessive force was unfounded. None of the officers interviewed indicated they witnessed the sergeant using force against the complainant. The manager of the club also stated that he observed no excessive use of force. He stated he thought the officer was more than accommodating in his attempts to get the complainant to leave the premises. The allegation of discourtesy, lodged against a different sergeant who allegedly told the complainant to "shut the hell up," was not sustained. The sergeant denied that she said anything to the complainant. The complainant could not identify which officer said it to her, but she thought the officer was female.

Monitor's Assessment: The investigator for IIS asked extensive and thorough questions of the officers. The questions asked were specific regarding the basis of the allegations. The independent witness interviewed clearly indicated that at the time of the arrest, the complainant was being belligerent.

4. Tracking Number: 03-257  
Date: November 1, 2003

Summary: Complainant was in a nightclub where he was assaulted by another individual. Security personnel intervened and escorted the complainant outside. While speaking to a security guard outside regarding the reasons for his being escorted out, he alleges he was approached by a police officer and words were exchanged. The officer suddenly grabbed him around the neck with both hands, held him off the ground and slammed him against a vehicle. He held him there momentarily and then threw him to the ground. He stated the officer took his badge off, put it in his pocket, and challenged him to a fight. He said another officer then intervened and told the first officer to back off. A third officer told the complainant to leave or he could be arrested. The complainant and his friends left the scene.

The complainant and one of the witnesses were originally interviewed by a district supervisor when the complainant came to the district station to file his complaint. The investigation was later turned over to IIS for investigation.

The officer's version of the incident differed considerably from the complainant and a witness who was with the complainant. He stated the complainant approached one of the bouncers standing next to him and tried to "make contact." He clarified this as being an attempt to attack the bouncer. The officer said he pushed the complainant back and told him he needed to leave the lot. He alleges the complainant "came at" him and grabbed his radio and badge, damaging the badge, breaking his sunglasses and causing him to drop his cell phone. He then pushed the subject back by holding up his hand and blocking the complainant's effort to come at him. The subject fell to the ground. The officer told the complainant he should leave or he would be arrested. The officer denied ever picking the complainant up by the neck, throwing him to the ground or challenging him to fight.

A supervisor was present at the scene and the officer approached him to tell him he felt the complainant should be arrested for putting his hands on a police officer. The sergeant told him he would handle it. The sergeant calmed the subject down and had him leave. The complainant

returned later to pursue the incident. At that time, the individual with whom he had the original altercation was in the parking lot and was seen with a gun by members of the complainant's party. That individual was arrested.

Several other witnesses, including security personnel who were on the scene and other officers who were present, were interviewed during this investigation. Their taped statements were consistent with what the officer described. All stated the complainant went after the security guard when the officer stopped the complainant and told him to leave. The complainant grabbed the officer's shirt, pulling his badge and sunglasses off. These witnesses denied the officer ever grabbed the complainant, held him up or threw him to ground, and did not challenge him to fight.

CPD Review: This complaint was initially investigated by a District supervisor but was later turned over to IIS. The complainant, officers and all possible witnesses were contacted and interviewed. The statements of the complainant and his friend differed from those of the officers and security staff. It was not possible to reconcile the differences in the two versions of the incident through further investigation.

IIS recommended the complainant's allegations regarding the use of force by the officer and challenging the complainant to a fight be "not sustained." Following the administrative review, the original allegations were closed as not sustained.

During this investigation, IIS did determine that the subject officer failed to complete a "Noncompliant Suspect/Arrestee Report" form as a result of his pushing the complainant away and causing him to fall to the ground. They recommended that this result in a finding of "Sustained - Other" for violation of CPD's Manual of Rules and Regulations. This resulted in appropriate administrative action.

Monitor's Assessment: The investigators were diligent in their efforts to locate and interview all possible witnesses. The allegations were thoroughly explored by IIS staff and inconsistencies in the statements were identified and fully probed during the interviews. The tone of the investigation and the handling of the interviews were professional and objective. Based on the information provided and the thoroughness of the investigation, the Monitor concurs with the IIS findings and recommendation.

5. Tracking Number: 04-029  
Date February 9, 2004

Summary: An officer responded to an assault call and located complainant, the alleged suspect. When the officer exited the car, the complainant fled. The officer chased complainant and warned him to stop or he would use chemical spray. According to the arresting officer, the complainant did not stop, the officer deployed his chemical spray, and was able to arrest complainant. When placed in the police car, complainant was able to move his handcuffs from behind his back to behind his knees. He was taken out of the car and his handcuffs were repositioned, and he was placed back in the car and secured with the lap bar restraint. Complainant was able to get out of the restraint bar and began kicking the windows. When officers tried to refasten the lap bar, the buckle on the bar broke. The supervisor who had been called to the scene after the initial chemical spray then called for flexcuffs. While waiting for the flexcuffs, two officers entered the back seat of the car and physically held the lap bar down. Complainant continued to kick and scream. The officers requested authorization to use chemical spray. The supervisor warned complainant that chemical spray would be used, and when the complainant continued to kick, chemical spray was used a second time.

During complainant's interview on the use of chemical spray, complainant alleged that he had been punched in the ribs several times, both when he was initially apprehended and when he was in the back seat of the police car. Also, when medical personnel at the Justice Center examined the complainant, they noted a scrape on his chest, but determined no treatment was needed.

CPD Investigation: The supervisor who was called to respond to the scene after the initial use of chemical spray conducted the interview of the complainant. He also returned to the scene and took taped interviews of two witnesses. One of the witnesses stated that he saw the initial arrest and did not see the officer punch or strike complainant. He also saw complainant kicking the windows of the police car and states that he did not see the officers punch complainant at that time. The second witness did not see the initial arrest but saw the complainant in the police car. He too states that complainant was struggling and banging his head against the partition, and that the officers had to hold down his arms and legs. He did not see any officers punching complainant.

When the sergeant began writing up his investigation, he realized that because he was involved in authorizing the second use of chemical spray, he should not be conducting the investigation. He turned the

investigation over to another sergeant who completed the Use of Chemical Spray Report and took taped statements from the officer who used spray and from the first sergeant who initially responded. The sergeant who initially responded went on to complete an Injury to Prisoner Report, the Citizen Complaint Form, and a supplemental memo addressing the complaint. Based on a review of these materials, IIS determined the complaint to be unfounded.

Monitor's Assessment: The first sergeant properly filled out a complaint form when the complainant alleged during his interview that he had been punched. However, because he was the one who authorized the second use of chemical spray, he should not have been the one conducting the use of force investigation. Upon realizing this, the sergeant appropriately contacted another supervisor from the District to complete the investigation. However, this uninvolved sergeant should also have completed the complaint investigation and the Injury to Prisoner Report. Although the Monitor's tape of the interview with the complainant was very difficult to understand, the disposition of the complaint also appears to be appropriate, given the statements of the witnesses.

6. Tracking Number: 04-043  
Date: December 10, 2003

Summary: Officers were responding to a radio run for sound of gunshots. An officer observed the subject with a handgun and began pursuing him on foot. The subject was observed throwing the gun onto the ground. While pursuing the subject, an officer pushed him in the back causing him to stumble and fall against a stopped police vehicle. The subject claimed that the patrol car rolled over his foot causing him injury. Visual inspection by the officer showed the foot to be wedged against the front of the tire. Fire Department personnel were called to provide medical assistance to the subject and he was transported to the hospital.

The emergency room doctor found no signs of trauma or injury to the subject's foot. Had the vehicle rolled over his foot, there would have been some trauma or injury evident.

CPD Review: The CPD investigated the complaint very thoroughly. The supervisors on the scene had an accident investigation officer respond to investigate and he determined, based on the evidence, there had been no accident or injury as a result of the incident. Statements were obtained from all of the CPD personnel involved and each of them indicated that the patrol vehicle was stopped at the time that the subject

ran into it. The subject refused to provide a statement to the CPD investigating official.

Command determined that the complaint should be unfounded, as there did not appear to be any evidence to support that it actually occurred.

Monitor Review: The Monitor concurs with the unfounded decision of the CPD. The CPD conducted a thorough investigation into the complaint and was unable to develop any information that supported the allegation. All information led to the fact that the vehicle did not roll over the subjects' foot.

7. Tracking Number: 04-055  
Date: January 19, 2004

Summary: Complainant was contacted in response to a call involving domestic violence. Information was provided to the officers that complainant had outstanding warrants and they attempted to investigate this further. Complainant refused to cooperate or follow directions of the officers, resulting in his being arrested for obstructing and resisting arrest. When the arresting officers attempted to handcuff him, he pulled away, leaving one handcuff dangling from his wrist. He began flailing his arms about and caused an injury to one officer as he attempted to break free. This situation increased the risk of injury to both officers present, who then struck the complainant with their PR-24 batons in an effort to subdue him and regain control. Chemical irritant was also used before the subject was controlled and handcuffed.

The complainant alleges he was struck in the head in addition to the strikes to his arms and legs. He stated he was struck on the side of the head, the back of the head, his back and shoulder area.

CPD Review: IIS interviewed the complainant, the officers involved, and the adult witnesses who were present in the residence at the time of the incident. With the exception of the complainant, all the statements were consistent with the officers' account of this incident and what was described in the reports.

IIS recommended this complaint be closed as "unfounded" based on the consistency of the officer's and witness statements provided, and their review of the physical evidence. The injuries that were sustained by the complainant were consistent with what the officers described in their force report and there was no evidence of swelling or bruising to the complainant's head, back or shoulder area. The actions taken by both officers were deemed as being within Department policy.

Monitor's Assessment: The facts in this case support the findings and recommendation made by IIS. The investigation was thorough and appears in accord with Department policy and the MOA provisions. The Monitor concurs with the findings and disposition on this case.

8. Tracking Number: 04-070  
Date: November 28, 2003

Summary: Officers responded to a call for service for a missing person returned. Prior to arrival, the officers checked the name of the subject and found that there were outstanding arrest warrants for the subject. Once on the scene, the officers told the subject, and her Mother, that she was under arrest for outstanding warrants. The subject immediately fell to the ground and lay on her hands so that she could not be handcuffed. Officers ordered her to place her hands behind her back, but she refused to comply. One officer then reached in and attempted to grab her hand and force it behind her. As he reached for her hand, the subject bit his arm. As a result of the bite, the officer fired a burst of chemical irritant onto her face and ordered her to place her hands behind her back. The subject complied.

The Fire Department responded and washed the irritant off her face and the subject was placed into the rear of the police vehicle for transport. While enroute to the station, the subject was able to remove one of her hands from the handcuffs and reach out through an open car window and open the door. She then jumped from the moving vehicle. The officer immediately pursued her and was able to re-cuff her and place her back into the vehicle after a brief struggle.

Once at the hospital, the subject complained of being kicked, punched and having her ponytail pulled by the officers.

CPD Review: The CPD interviewed the subject and all of the officers involved in the incident. Command found that the use of the chemical irritant was within the guidelines of the CPD. The allegations as to excessive use of force were not sustained. Command however, did issue official reprimands for the officers' failure to properly secure the prisoner.

Monitor's Review: The Monitor has several concerns regarding how the investigation was completed:

- The subject was interviewed in the presence of the arresting officers. This might inhibit the responses of the subject with the alleged abuser in room.
- The Mother of the subject was not interviewed to determine her perspective of the incident or how the officers handled themselves.
- In reviewing the interview tape of the subject, it appears that the tape was stopped in the middle of the interview and then restarted. While this may have been necessary, it should have been stated on the tape that the interview was being stopped and restarted.

The use of force in this incident appears to be consistent with the MOA and CA requirements, as the officers handled themselves with restraint in dealing with a violent and combative person. The complaint investigation conducted by the field supervisor, however, was insufficient, and the review by IIS did not identify and address these deficiencies.

9. Tracking Number: 04-073  
Date: March 17, 2004

Summary: The complainant was contacted by officers who knew he had outstanding warrants. An officer told him to stop and place his hands behind his back but he refused and walked away. The complainant put his hand in his pocket and attempted to destroy a bag of marijuana while continuing to walk away. He was told that a Taser would be deployed if he did not stop but he continued walking away. The Taser was deployed but was ineffective because only one barb struck the complainant. The officer then used the Taser to drive stun him, causing him to go to the ground. He was then handcuffed without further incident.

In the course of conducting the required use of force investigation, the complainant alleged the officer used the Taser only after he (the complainant) complied with the officer's orders. Complainant acknowledged that he initially refused to comply but stated that once the Taser barb struck him he cooperated. He alleges the officer shocked him with the Taser after he was on the ground and was cooperating with the instructions he was given.

CPD Review: The initial investigation was conducted by a District sergeant based on the use of force investigation involved. Interviews were conducted with the complainant, the officer and a witness officer. There were no independent witnesses to the incident. The interviews

were recorded and photos and reports were also reviewed. The statements from the two officers who were present were consistent. The investigating supervisor recommended the matter be closed as “exonerated” based on the view that the officer’s actions were consistent with Department guidelines.

Following further review by IIS, the final recommendation was that the complaint be classified as “not sustained”.

Monitor’s Assessment: The investigation was thorough, consistent with the MOA and the finding of not sustained was appropriate in light of the inability to locate independent, unbiased witnesses. The Monitor concurs with the finding and recommendation in this matter.

## **B. CCA Investigations**

1. CCA Tracking Number: 03-186  
Date: May 15, 2003

Summary: This is the same incident as IIS complaint 03-137 reviewed above.

CCA Investigation: The CCA investigation mirrored the IIS investigation into this matter and incorporated the IIS investigative summary. The CCA conclusions mirror the IIS findings of sustained as to the allegations of excessive force, failure to notify a supervisor of injuries, and failure to seek medical attention for someone in police custody.

Monitor’s Assessment: As noted above, the accused officer’s own statement is sufficient to raise the issue of false report or misrepresentation of facts. The CCA did not discuss this possibility.

2. CCA Tracking Number: 03-344  
Date: November 3, 2003

Summary: While on bike patrol, officers observed a subject walking in the middle of the street committing a pedestrian violation. As they approached the subject they also noticed an open flask in his rear pocket. The officers stopped the subject and asked him to place his hands on the rear of a parked vehicle. The subject then placed his left hand into his pocket and was ordered to remove it by the officers. According to the officers, as the subject removed his hand he immediately dropped several pieces of crack cocaine onto the ground. The officers placed the subject in handcuffs, while at the same time they picked up the crack and placed it onto the rear of the parked vehicle.

Once the officers placed the crack onto the trunk of the vehicle, the subject leaned over and ate them. Both officers immediately grabbed the subject and ordered him to spit the crack out. The subject refused and began thrashing about. The thrashing about caused all three of them to fall to the ground with the officers continuing to order the subject to spit the crack out of his mouth. As the subject continued to refuse to comply, one officer sprayed his chemical irritant onto the face of the subject in an attempt to force him to comply. The chemical irritant had no effect so the officer made three additional attempts that also failed. A total of four separate bursts were administered to the suspect.

During the struggle one of the officers used his knee to strike the subject in an attempt to get him to comply and to cease thrashing about. These strikes failed. Once a patrol car arrived on the scene to transport the subject, the officers picked the subject up and began walking towards the vehicle. While walking toward the car the subject turned and attempted to bite one of the officers. The officer then pushed the subject away from him causing the subject to fall onto the patrol vehicle. The subject was then placed into the patrol vehicle. The Fire Department responded and flushed the chemical irritant off the subject's face. The subject was transported to the hospital for treatment of the ingested crack cocaine.

An independent witness observed the officers and subject struggling on the ground and the officer push the subject into the patrol vehicle. This witness made an excessive use of force complaint with the CPD.

CCA Review: The CCA investigation determined that the alleged excessive use of force could not be sustained. While the photographs of the subject taken at the hospital showed indications of bumps and bruises, CCA could not determine if they were new or previous injuries. [The subject had refused to release his medical records. The Use of Force Report also indicates that the injuries could not be determined to be from the struggle or previous injury.] The CCA Investigator was unable to locate and interview the subject for a more definitive statement.

CPD Review: The CPD conducted an investigation at the time of the incident and obtained taped statements from the witness and the arrested subject. The CPD also found the complaint to be not sustained. Additionally, the CPD addressed the issue of the officers not securing the crack cocaine from the subject and took appropriate action.

Monitor's Assessment: Under the MOA and under CPD procedures a verbal warning must be given prior to the use of chemical spray on a

person restrained, and on a person who is attempting to swallow contraband. In this case, the officers ordered the subject to spit out the crack cocaine, but did not give a verbal warning of chemical spray use. In addition, after the first use of chemical spray was ineffective, and certainly after the second, and then a third was ineffective, it would seem clear that additional cumulative use of chemical spray would not be effective.

The CCA investigation missed some minor inconsistencies in the various statements, but in the absence of the subject making a definitive and cooperative statement, it is difficult to find a disposition other than not sustained.

3. CCA Tracking Number: 03-385  
Date: September 29, 2003

Summary: Complainant stated several officers came to his home looking for a wanted subject who lived nearby. They asked him if he was the person and he told them he was not and that the individual they were looking for lived down the street. The officers forced their way into his residence and demanded his identification. He stated he told them they were not welcome in his home and they barged in nonetheless. They surrounded him, grabbed him by his arms and told him to put his arms behind his back. They then handcuffed him and threatened to arrest him for aiding and abetting a felon if he didn't cooperate with them. Although he knows the wanted subject, he said he did not see him that day. After they confirmed that he was not the person they were looking for they asked him where the person was and he told them he did not know. They took the handcuffs off at that time. He again told them where the correct house was and they left.

The officers involved stated they were dispatched to the complainant's home based on a Crime Stoppers anonymous tip that a subject who was wanted on felony charges was at that location. The officers said they were invited into the house by the complainant. When he began moving about the house and acting as though he was agitated they handcuffed him. They said they did this for his and their own safety. They also said he gave them permission to conduct a search.

Once it was determined the complainant was not the wanted subject, the officers requested his assistance in identifying the house where the subject lived. He pointed out the correct address to them and the wanted subject was apprehended shortly after at his mother's home.

CCA Investigation: CCA investigators interviewed the complainant and all officers who were on the scene at the time of this incident. The

complainant was clear in his assertion that he did not invite the officers in and that he told them they were not welcome in his home. They identified and probed the inconsistencies noted between the statements of the officers and the complainant.

The investigators attempted to establish who was in charge at the scene during the contact with the complainant, whether relevant policies or procedures were followed in the course of the contact and the search conducted, and if any attempt was made to confirm the correct address and a physical description of the wanted subject prior to contacting the complainant. They questioned the officers about their failure to follow the Department's policy requiring that a signed consent form be obtained before any consent search is conducted.

Monitor's Assessment: The investigation was conducted in an even-handed manner, with the allegations being probed thoroughly and objectively. The investigators displayed skill in framing their questions and patience in allowing the interviewees to present their responses in their own words and without interruption.

Relevant questions were posed in an effort to ascertain whether the officers tried to confirm whether they had the correct location and attempted to establish what the wanted subject's physical description was prior to their contact with the complainant. The primary officer described the two subjects as being of similar height and weight. However, it is noteworthy that the wanted subject differed considerably in height, age and weight from the complainant.

The officers involved did not obtain a physical description of the subject prior to the contact. They also failed to complete the required consent search form (Form 601 – Consent to Search Without a Warrant) although they did acknowledge knowing that policy requires that this be done. None of the officers interviewed acknowledged handcuffing the complainant or knowing who did, yet they did state the subject was handcuffed.

The routing form from the CCA Executive Director to the City Manager reflects a recommendation that the original allegation of unreasonable search and seizure be sustained and it indicates the CCA Board concurred with this. However, that form does not address an additional allegation, finding and recommendation reflected in the Executive Director's report of Summary Disposition. This additional finding and recommendation was to sustain a violation by the two primary officers of CPD Policy 12.700, which involves the requirement to obtain a signed consent to search.

Because the additional allegation is not addressed in the routing form and since there was no indication as to what the final disposition was by the City Manager, follow-up should be conducted to ascertain what, if any, actions resulted from this complaint and investigation.

4. CCA Tracking Number: 03-494  
Date: November 9, 2003

Summary: Upon exiting a bar in downtown Cincinnati in the early morning hours with a group of friends, complainant said they were confronted by a panhandler who approached a member of the party and asked for money. The complainant told the panhandler to get a job and used a racial slur. Immediately following this, an officer approached the complainant and grabbed his arm. One witness, a member of the complainant's group, said he saw this officer standing nearby. As soon as the complainant used the racial slur, he said the officer immediately called out to the complainant and told him to "come here." The complainant said "No" and told the officer he had not done anything and he was going home. The officer then approached the complainant and grabbed the complainant by the arm. The complainant pulled away and told the officer "Don't touch me, get your hands off me." The officer grabbed the complainant by the arm again, forcibly took him to the ground and handcuffed him. The complainant told the officer his leg was injured and the Fire Department was called to provide medical assistance. They briefly examined the complainant and advised the officers that his leg was a little swollen and he may have sprained his ankle. The complainant insisted on getting medical attention because of the pain he was in. He was initially taken to the District station, but finally transported to the hospital where it was determined that his leg and ankle were broken.

CCA Investigation: The investigation included interviews with the complainant, a witness, the arresting officer, the sergeant who responded and six witness officers. The medical treatment forms from the Fire Department and the hospital were also reviewed along with CAD data, two pictures of the complainant and the Injury to Prisoner Form.

The officer said that prior to making contact with the complainant, he had been contacted by an unknown subject who advised him that the complainant was being loud and disorderly. When the officer saw the complainant, he attempted to advise the complainant that he needed to calm down and go home. He said the complainant was argumentative so he reached out to put his hand on the complainant's back and tell him to calm down. The complainant stepped back and then moved towards him in such a way that the officer said he felt he "was on the defensive." The officer immediately applied a foot sweep to take the subject down and

then handcuffed him while he was on the ground. The officer did not indicate he ever said anything to the complainant during this encounter about placing him under arrest nor did he identify the charges.

The officer denied ever observing the complainant talking to the panhandler or hearing him use a racial slur. He described the complainant as being loud and said the complainant used profanity in responding to him. While the complainant and the witness both stated the complainant did use a racial slur and profanity in his encounter with the panhandler, neither of them said anything about the use of profanity when speaking to the officer. The descriptions of the incident they provided reflected the encounter as being more civil in nature although both said the complainant did not comply with the officer's initial command to "come here." Both also said the officer's action in taking the complainant to the ground was sudden and unexpected.

CCA described the use of force as being appropriate based on the officer making an arrest, during which time the complainant was uncooperative and pulled away. They recommended the officer be exonerated on excessive force charge. They also identified a collateral issue relating to the failure by the supervisor to complete a use of force investigation as required by Department policy. CCA recommended that charge be sustained.

The complainant was not satisfied with the results of the investigation and requested the CCA Board refer his case back to staff to interview additional witnesses. A motion to that effect was made and passed by the Board at their meeting on March 15, 2004. The complainant was requested to follow up on this and provide the investigators with contact information on the additional witnesses. At the time of this review, he still had not done so.

Monitor's Assessment: CCA stated the take-down method used by the officer was appropriate because the officer was making an arrest, during which time the complainant was uncooperative and pulled away. In his interview the officer stated he was trying to get the complainant to calm down and was attempting to talk to him. He did not state he was intent on making an arrest or that the subject's conduct at that time was the basis for the subsequent arrest. No questions were posed to the officer about when or why he decided to make the arrest. The officer did describe the complainant's reaction to him when he put his hand on him as placing him (the officer) "on the defensive"; however, there was nothing shown that indicates the complainant was aggressive toward the officer. Further, the witness statements were not consistent with the officer's. This inconsistency was not probed, nor was there any effort made to make a credibility determination.

The officer was not queried regarding his reason for the use of force or whether he was aware why the force resulted in breaking the subject's leg and ankle. The injuries sustained are unusual for a leg sweep take-down method. Although the officer arrested the complainant for "disorderly conduct while intoxicated," there appears to be some reticence on the officer's part during the taped interview to describe the complainant as being intoxicated and this was not done until such time as that issue was pursued by the investigators.

The materials submitted for review did not include a Use of Force Report, the photos that were referenced, or the arrest report.

This investigation is not consistent with the MOA and CA requirements in that there are issues that were not sufficiently probed and a credibility determination appears to be warranted here. The discrepancies between the officer's statement and those of the complainant and witness were not addressed.

5.     Tracking Number:         03-509  
       Date and Time           November 17, 2003

Summary: Complainant and two passengers were riding in a vehicle with an expired license plate. The two police officers involved were routinely running license plates and came upon complainant's expired plate. Complainant's license plate had been expired for approximately four months. The officers observed the vehicle pull into a parking lot on private property and approached the vehicle. Upon their approach to the vehicle, one of the officers observed movement by the three black male occupants as he approached the vehicle on the passenger side. The officer stated that he smelled what appeared to be marijuana coming from the vehicle (he says in his interview that he believed the passenger side window was down). The officer asked if any of the occupants of the vehicle had marijuana on them. They all denied having marijuana. One of the officers asked the front seat passenger to exit the car and the officer told him that possession of marijuana was a citable offense and that he would not be arrested. On hearing this, the front seat passenger acknowledged he had marijuana in his pocket and handed the officer approximately an ounce of marijuana. The officers then asked the driver if they could search the vehicle. The driver said no to the request to search the vehicle. The officers had all the passengers exit the vehicle, and they began to search the vehicle anyway. The officers told the driver that if a vehicle is more than thirty days with expired tags, it is subject to impound and search. In addition, they stated the odor of marijuana gave them probable cause to search the

vehicle. Throughout this process, the MVR was not activated. The complainant alleged an improper search.

CCA Investigation: There were taped interviews conducted of the officers only. The investigators could not find the complainant because the complainant did not leave a forwarding address or telephone number. The investigator consulted the CCA's legal advisor to determine the standards for conducting a warrantless search. The CCA investigation concluded the search was not improper and therefore exonerated the officers on the allegation of an improper search. However, the investigator determined that the officers violated procedures by failing to activate the MVR. An allegation of a violation of CPD Procedure 12.537, Mobile Video Recording equipment, was sustained.

Monitor's Assessment: The investigative steps taken by CCA to determine the legality of the warrantless search appear to be appropriate, although the file does not indicate whether the officers were correct that a car with tags over 30 days beyond expiration subjects the car impoundment and search. One concern about the investigation, however, is the failure to locate the complainant or any witnesses. It appears that the passenger who admitted having marijuana was cited, and therefore, this person could have been located and interviewed.

6. CCA Tracking Number: 03-524  
Date: December 9, 2003

Summary: Complainant received a ticket for not displaying a front license plate on his vehicle. Upon the officer's initial contact with the driver, the officer asked him if he was aware that he had lost his front license plate. He stated he did not attach a front license plate because the vehicle did not have brackets to do so. The officer issued a citation, which the driver initially refused to sign because he did not understand it. He was upset because he observed other drivers did not have front plates on their cars. A supervisor was called to the scene and advised the driver that his signature was not an admission of guilt. If he did not sign the citation, he was advised he would be taken to jail. He then signed the ticket because he said he felt intimidated.

Complainant maintains the officer could not see the front license plate because he was behind him. He alleged he was the victim of racial profiling because he is white, was driving a nice vehicle, and the officer was black.

CCA Investigation: The investigation involved interviews with the complainant, a passenger (his wife), the involved officer and the supervisor who responded. A copy of the citation was included with the

report as well as a transcript of the audio portion of the mobile video recording from the traffic stop.

During the interviews, the investigator made specific inquiries of the complainant and witness in an effort to determine whether anything was said by the officer that led the complainant to believe he was being discriminated against. The review of the MVR tape and the statements of the complainant and witness show the officer was initially inquisitive about the missing plate and courteous throughout the contact.

CCA concluded the allegation of discrimination (racial profiling) was unfounded and the discourtesy allegation should be classified as unfounded/not sustained. This was based on the fact that some portions of the MVR audio recording were not audible so the entire interaction could not be heard.

Monitor's Assessment: The CCA investigation was conducted in accordance with the requirements of the MOA and CA. The interviews were thorough, the facts were able to be established based on the statements provided and the MVR recording (and transcript), and the findings were consistent with this.

7. CCA Tracking Number: 04-006  
Date: January 12, 2004

Summary: Complainant alleges that two officers falsely accused her of making a threatening statement toward one of the officers, resulting in her arrest for menacing. Complainant was sitting in the back of the courtroom attending a court hearing concerning her sister. When the trial was over, one of the officers approached her and told her she was under arrest. The two officers handcuffed her and escorted her out of the courtroom. The officer alleged that complainant stated "you a dead cop and a punk." Complainant also says that at the Justice Center, when she asked the officer why he made up the story and told him "you know you are lying," the officer responded "Who do you think the judge is going to believe, you or me? Look what happened to your sister." The complainant and the officers had a previous encounter three months before this incident, in which complainant's daughter was arrested. A separate complaint was filed regarding that incident.

CCA Review: The CCA investigator interviewed six others who were in the courtroom at the time of the alleged menacing statement by the complainant. None of the others heard the menacing statement, although one witness did hear complainant say "every dog has its day." Witnesses did say that the judge had earlier in the trial had to admonish complainant not to disrupt the trial. The CCA determined the

allegations against the officer initiating the arrest to be not sustained. The CCA determined that the second officer only assisted in the arrest, and was not involved in the decision to make the arrest. The allegations against the second officer were determined to be unfounded.

Monitor's Assessment: The CCA thoroughly investigating this allegation and was not able to obtain evidence to corroborate or unfound the allegation. Therefore the not sustained finding was appropriate.

8. CCA Tracking Number: 04-007  
Date: January 2, 2004

Summary: This investigation involves an allegation of excessive force. Complainant is the wife of a subject arrested on narcotics-related charges and who, when being arrested, was subjected to use of force by the arresting officers. The complainant was not present during the arrest and relied upon information provided to her by some third party. She alleged that the arrestee, her husband, was approached by plain clothes officers who grabbed him, forced him to the ground and then punched and kneed him.

The officers involved stated they were working in plain clothes when they observed the complainant engaged in what appeared to be a drug transaction in public view. As they approached the complainant one of the officers saw him discard something on the street. The object was retrieved and determined to be an oxycodone pill. This resulted in the officers instructing the complainant to turn around so that he could be handcuffed. He initially complied, but as the officer removed his handcuffs, the complainant turned back toward the officers and assumed a combative stance.

Two officers attempted to physically control complainant by grabbing him from either side. He attempted to pull away so they forced him to the ground, with all three of them becoming engaged in a physical struggle. During the struggle, the complainant grabbed the handle of one officer's firearm and tugged on the weapon. The officer yelled at him to let go of the weapon, but he continued to tug on it. The officer then began to strike him in the face with his fist and palm strikes. The use of force also included knee strikes by one of the officers while they were on the ground. The complainant released his grip on the gun and put his hands beneath him but he still refused to submit to their commands. Chemical irritant was then applied until he did comply and submit to being handcuffed.

The Fire Department was requested to respond and provided medical attention at the scene. The subject was then transported to the

hospital for further medical attention. The medical staff at the hospital discovered the complainant had a plastic bag in his mouth and he acknowledged to them that it had contained heroin which he had ingested. He was held at the hospital for observation for several hours prior to being released for booking.

Photos of the complainant were taken to document the injuries he sustained as a result of the use of force.

CCA Investigation: This included a review of the arrest report, the use of force investigation conducted by CPD, CCA interviews with the complainant, officers and witnesses, the medical records and photos, and all other reports and documents associated with this incident.

The complainant acknowledged during the interview that he had attempted to flee and he did knock one of the officer's hands away as the officer was attempting to grab him.

The investigators noted a number of discrepancies and inconsistencies in the complainant's account of the incident. At various times he stated he immediately lost consciousness when he struck the ground but then went on to describe his actions and the actions of the officers after falling to the ground. He claimed to have regained consciousness while he was being handcuffed. Investigators noted that several statements made to them by the complainant were determined to be false.

CCA staff found that some of the witness statements supported the officers' account of the incident while others contradicted this. However, all parties agreed that force was used. Based on their review and analysis of the incident, CCA felt the use of force was reasonable and appropriate for the circumstances they encountered. Their recommendation was that the allegation regarding the use of force be classified as "exonerated," and the CCA Board concurred.

Monitor's Assessment: The CCA investigation was thorough and the recommendation made was based on a full examination of the statements and facts. There were some conflicting statements made by the uninvolved witnesses that were not addressed or resolved. Credibility determinations would normally be warranted in such situations; however in this instance, it appears further efforts to resolve those conflicts would not have any significant bearing on the findings or outcome.

The photos of the injuries sustained by the complainant were not included in the package forwarded to the monitor.

9. Tracking Number: 04-111  
Date: March 15, 2004

Summary: Complainant was stopped by police at approximately 9:00 p.m. for not having a front license plate. Complainant alleged that he was the victim of racial profiling and he was pulled over because of his race. Complainant did not articulate why he thought it was racial profiling, but he stated he just felt that something was not right. Complainant also stated that the officer purposely chose not to document that he showed the officer his proof of insurance. By not checking the insurance box appropriately, the complainant states he could not pay the ticket without going to court and showing proof of insurance.

The sergeant indicated that he pulls over approximately two people a day for traffic violations and he cites about 99% of them. According to the sergeant's interview, the driver could have been cited for three violations. Although he chose only to charge the driver for the missing front plate, the officer states that the windows were overly tinted and the back license plate was also covered up and obscured.

CCA Review: Two investigators questioned the sergeant thoroughly. They covered all the issues that the complainant had raised, including the insurance and the complainant's explanation for the missing front plate.

Monitor's Assessment: The investigation was fairly straightforward and was consistent with the MOA. However, the file indicates that this officer's vehicle was not equipped with a MVR.

### **C. CCRP Investigations**

The Monitor Team reviewed 11 CCRP investigations this quarter. For all of the investigations:

- The complaint was properly investigated as a CCRP case. The one complaint that involved an allegation of force was reassigned to IIS and investigated as an excessive force case by IIS
- The complaint was resolved in writing, and resolved with one of the four dispositions required by the MOA
- The complaint was assigned a unique identifier and tracked in the complaint system

- The investigation was conducted by a supervisor who was not involved in the conduct that precipitated the complaint
- The investigation was completed before a resolution meeting was scheduled
- All involved officers and witnesses were interviewed, and all relevant police activity was investigated
- For each case, a report was written that included a description of the incident, a summary of the evidence, and findings and analysis (although in two of the 10 cases, the analysis was fairly limited).
- The investigative report was signed by the District Commander
- In six of the ten cases, the investigative report indicates that the complainant was notified of the outcome of the case. In two cases, the investigating supervisor was unable to locate the complainant, and in two cases, it is unclear whether the complainant was notified of the outcome.

For most of the complaints, the complaint process was open and there was no indication that officers discouraged the complaint. Third party complaints were accepted. In one case, a complainant alleged that when he went to the District to make a complaint during the first shift, he was told to come back to speak to a second shift supervisor (although his CCA referral states that he says he was given a complaint brochure). The desk officers states that she gave the complainant a complaint form and asked him to have a seat until a supervisor responded in to the District to speak with him. The officer states that the complainant waited, but then left before the supervisor arrived. In a second case, the complainant alleges that he was not given a copy of the complaint form after he had completed it, although the sergeants states that he was given the form.

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